

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Cigarette Tax Act is amended by changing  
5 Sections 1, 3, 3-10, 4, 4b, 4d, 9c, 18, 18a, 18b, 18c, 20, and  
6 24 and by adding Section 28a as follows:

7 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

8 Sec. 1. For the purposes of this Act:

9 "Brand Style" means a variety of cigarettes distinguished  
10 by the tobacco used, tar and nicotine content, flavoring used,  
11 size of the cigarette, filtration on the cigarette or  
12 packaging.

13 "Cigarette", means any roll for smoking made wholly or in  
14 part of tobacco irrespective of size or shape and whether or  
15 not such tobacco is flavored, adulterated or mixed with any  
16 other ingredient, and the wrapper or cover of which is made of  
17 paper or any other substance or material except tobacco.

18 "Contraband cigarettes" means:

19 (a) cigarettes that do not bear a required tax stamp  
20 under this Act;

21 (b) cigarettes for which any required federal taxes  
22 have not been paid;

23 (c) cigarettes that bear a counterfeit tax stamp;

1 (d) cigarettes that are manufactured, fabricated,  
2 assembled, processed, packaged, or labeled by any person  
3 other than (i) the owner of the trademark rights in the  
4 cigarette brand or (ii) a person that is directly or  
5 indirectly authorized by such owner;

6 (e) cigarettes imported into the United States, or  
7 otherwise distributed, in violation of the federal  
8 Imported Cigarette Compliance Act of 2000 (Title IV of  
9 Public Law 106-476); ~~or~~

10 (f) cigarettes that have false manufacturing labels; ~~or~~

11 (g) cigarettes identified in Section 3-10(a)(1) of  
12 this Act; or

13 (h) cigarettes that are improperly tax stamped,  
14 including cigarettes that bear a tax stamp of another state  
15 or taxing jurisdiction.

16 "Person" means any natural individual, firm, partnership,  
17 association, joint stock company, joint adventure, public or  
18 private corporation, however formed, limited liability  
19 company, or a receiver, executor, administrator, trustee,  
20 guardian or other representative appointed by order of any  
21 court.

22 "Prior Continuous Compliance Taxpayer" means any person  
23 who is licensed under this Act and who, having been a licensee  
24 for a continuous period of 5 years, is determined by the  
25 Department not to have been either delinquent or deficient in  
26 the payment of tax liability during that period or otherwise in

1 violation of this Act. Also, any taxpayer who has, as verified  
2 by the Department, continuously complied with the condition of  
3 his bond or other security under provisions of this Act for a  
4 period of 5 consecutive years shall be considered to be a  
5 "Prior continuous compliance taxpayer". In calculating the  
6 consecutive period of time described herein for qualification  
7 as a "prior continuous compliance taxpayer", a consecutive  
8 period of time of qualifying compliance immediately prior to  
9 the effective date of this amendatory Act of 1987 shall be  
10 credited to any licensee who became licensed on or before the  
11 effective date of this amendatory Act of 1987.

12 "Department" means the Department of Revenue.

13 "Sale" means any transfer, exchange or barter in any manner  
14 or by any means whatsoever for a consideration, and includes  
15 and means all sales made by any person.

16 "Original Package" means the individual packet, box or  
17 other container whatsoever used to contain and to convey  
18 cigarettes to the consumer.

19 "Distributor" means any and each of the following:

20 (1) Any person engaged in the business of selling  
21 cigarettes in this State who brings or causes to be brought  
22 into this State from without this State any original packages  
23 of cigarettes, on which original packages there is no  
24 authorized evidence underneath a sealed transparent wrapper  
25 showing that the tax liability imposed by this Act has been  
26 paid or assumed by the out-of-State seller of such cigarettes,

1 for sale or other disposition in the course of such business.

2 (2) Any person who makes, manufactures or fabricates  
3 cigarettes in this State for sale in this State, except a  
4 person who makes, manufactures or fabricates cigarettes as a  
5 part of a correctional industries program for sale to residents  
6 incarcerated in penal institutions or resident patients of a  
7 State-operated mental health facility.

8 (3) Any person who makes, manufactures or fabricates  
9 cigarettes outside this State, which cigarettes are placed in  
10 original packages contained in sealed transparent wrappers,  
11 for delivery or shipment into this State, and who elects to  
12 qualify and is accepted by the Department as a distributor  
13 under Section 4b of this Act.

14 "Place of business" shall mean and include any place where  
15 cigarettes are sold or where cigarettes are manufactured,  
16 stored or kept for the purpose of sale or consumption,  
17 including any vessel, vehicle, airplane, train or vending  
18 machine.

19 "Business" means any trade, occupation, activity or  
20 enterprise engaged in for the purpose of selling cigarettes in  
21 this State.

22 "Retailer" means any person who engages in the making of  
23 transfers of the ownership of, or title to, cigarettes to a  
24 purchaser for use or consumption and not for resale in any  
25 form, for a valuable consideration. "Retailer" does not include  
26 a person:

1           (1) who transfers to residents incarcerated in penal  
2           institutions or resident patients of a State-operated  
3           mental health facility ownership of cigarettes made,  
4           manufactured, or fabricated as part of a correctional  
5           industries program; or

6           (2) who transfers cigarettes to a not-for-profit  
7           research institution that conducts tests concerning the  
8           health effects of tobacco products and who does not offer  
9           the cigarettes for resale.

10          "Retailer" shall be construed to include any person who  
11          engages in the making of transfers of the ownership of, or  
12          title to, cigarettes to a purchaser, for use or consumption by  
13          any other person to whom such purchaser may transfer the  
14          cigarettes without a valuable consideration, except a person  
15          who transfers to residents incarcerated in penal institutions  
16          or resident patients of a State-operated mental health facility  
17          ownership of cigarettes made, manufactured or fabricated as  
18          part of a correctional industries program.

19          "Stamp" or "stamps" mean the indicia required to be affixed  
20          on a pack of cigarettes that evidence payment of the tax on  
21          cigarettes under Section 2 of this Act ~~(35 ILCS 130/2), or the~~  
22          ~~indicia used to indicate that the cigarettes are intended for a~~  
23          ~~sale or distribution within this State that is exempt from~~  
24          ~~State tax under any applicable provision of law.~~

25          ~~"Within this State" means within the exterior limits of the~~  
26          ~~State of Illinois and includes all territory within these~~

1 ~~limits owned by or ceded to the United States of America.~~

2 "Related party" means any person that is associated with  
3 any other person because he or she:

4 (a) is an officer or director of a business; or

5 (b) is legally recognized as a partner in business. †

6 ~~or~~

7 ~~(c) is directly or indirectly controlled by another.~~

8 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

9 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

10 Sec. 3. Affixing tax stamp; remitting tax to the  
11 Department. Payment of the taxes imposed by Section 2 of this  
12 Act shall (except as hereinafter provided) be evidenced by  
13 revenue tax stamps affixed to each original package of  
14 cigarettes. Each distributor of cigarettes, before delivering  
15 or causing to be delivered any original package of cigarettes  
16 in this State to a purchaser, shall firmly affix a proper stamp  
17 or stamps to each such package, or (in case of manufacturers of  
18 cigarettes in original packages which are contained inside a  
19 sealed transparent wrapper) shall imprint the required  
20 language on the original package of cigarettes beneath such  
21 outside wrapper, as hereinafter provided. ~~Any stamp required by~~  
22 ~~this Act shall note whether the State tax under Section 2 of~~  
23 ~~this Act (35 ILCS 130/2) was paid.~~

24 No stamp or imprint may be affixed to, or made upon, any  
25 package of cigarettes unless that package complies with all

1 requirements of the federal Cigarette Labeling and Advertising  
2 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
3 warnings, or any other information upon a package of cigarettes  
4 that is sold within the United States. Under the authority of  
5 Section 6, the Department shall revoke the license of any  
6 distributor that is determined to have violated this paragraph.  
7 A person may not affix a stamp on a package of cigarettes,  
8 cigarette papers, wrappers, or tubes if that individual package  
9 has been marked for export outside the United States with a  
10 label or notice in compliance with Section 290.185 of Title 27  
11 of the Code of Federal Regulations. It is not a defense to a  
12 proceeding for violation of this paragraph that the label or  
13 notice has been removed, mutilated, obliterated, or altered in  
14 any manner.

15 Only distributors licensed under this Act and  
16 transporters, as defined in Section 9c of this Act, may possess  
17 ~~or out of state manufacturers holding a permit under this Act~~  
18 ~~may receive~~ unstamped original packages ~~packs~~ of cigarettes.  
19 Prior to shipment to an Illinois retailer, a stamp shall be  
20 applied to each original package of cigarettes sold to the  
21 retailer. A distributor may apply tax stamps only to original  
22 packages of cigarettes purchased or obtained directly from an  
23 in-state maker, manufacturer, or fabricator licensed as a  
24 distributor under Section 4 of this Act or an out-of-state  
25 maker, manufacturer, or fabricator holding a permit under  
26 Section 4b of this Act. A ~~another person, each licensed~~

1 ~~distributor or out of state manufacturer holding a permit~~  
2 ~~shall apply a stamp to each pack of cigarettes imported,~~  
3 ~~distributed, or sold whether or not such cigarettes are subject~~  
4 ~~to State tax under Section 2 of this Act (35 ILCS 130/2) or any~~  
5 ~~other provision of State law, provided that a distributor or~~  
6 ~~out of state manufacturer may only apply a tax stamp to a pack~~  
7 ~~of cigarettes purchased or obtained directly from a licensed~~  
8 ~~distributor or an out of state manufacturer holding a permit.~~  
9 Only a licensed distributor ~~or an out of state manufacturer~~  
10 ~~holding a permit~~ may ship or otherwise cause to be delivered  
11 unstamped original packages ~~packs~~ of cigarettes in, into, or  
12 from this State. A ~~, provided that a licensed distributor or an~~  
13 ~~out of state manufacturer holding a permit~~ may transport  
14 unstamped original packages ~~packs~~ of cigarettes to a facility,  
15 wherever located, owned or controlled by such distributor;  
16 however, a distributor may not transport unstamped original  
17 packages of cigarettes to a facility where retail sales of  
18 cigarettes take place ~~or manufacturer~~. Any licensed  
19 distributor ~~person~~ that ships or otherwise causes to be  
20 delivered unstamped original packages ~~packs~~ of cigarettes  
21 into, within, or from this State shall ensure that the invoice  
22 or equivalent documentation and the bill of lading or freight  
23 bill for the shipment identifies the true name and address of  
24 the consignor ~~esignor~~ or seller, the true name and address of  
25 the consignee ~~esignee~~ or purchaser, and the quantity by brand  
26 style of the cigarettes so transported, provided that this

1 Section shall not be construed as to impose any requirement or  
2 liability upon any common or contract carrier.

3 The Department, or any person authorized by the Department,  
4 shall sell such stamps only to persons holding valid licenses  
5 as distributors under this Act. On and after July 1, 2003,  
6 payment for such stamps must be made by means of electronic  
7 funds transfer. The Department may refuse to sell stamps to any  
8 person who does not comply with the provisions of this Act.  
9 Beginning on the effective date of this amendatory Act of the  
10 92nd General Assembly and through June 30, 2002, persons  
11 holding valid licenses as distributors may purchase cigarette  
12 tax stamps up to an amount equal to 115% of the distributor's  
13 average monthly cigarette tax stamp purchases over the 12  
14 calendar months prior to the effective date of this amendatory  
15 Act of the 92nd General Assembly.

16 Prior to December 1, 1985, the Department shall allow a  
17 distributor 21 days in which to make final payment of the  
18 amount to be paid for such stamps, by allowing the distributor  
19 to make payment for the stamps at the time of purchasing them  
20 with a draft which shall be in such form as the Department  
21 prescribes, and which shall be payable within 21 days  
22 thereafter: Provided that such distributor has filed with the  
23 Department, and has received the Department's approval of, a  
24 bond, which is in addition to the bond required under Section 4  
25 of this Act, payable to the Department in an amount equal to  
26 80% of such distributor's average monthly tax liability to the

1 Department under this Act during the preceding calendar year or  
2 \$500,000, whichever is less. The Bond shall be joint and  
3 several and shall be in the form of a surety company bond in  
4 such form as the Department prescribes, or it may be in the  
5 form of a bank certificate of deposit or bank letter of credit.  
6 The bond shall be conditioned upon the distributor's payment of  
7 amount of any 21-day draft which the Department accepts from  
8 that distributor for the delivery of stamps to that distributor  
9 under this Act. The distributor's failure to pay any such  
10 draft, when due, shall also make such distributor automatically  
11 liable to the Department for a penalty equal to 25% of the  
12 amount of such draft.

13 On and after December 1, 1985 and until July 1, 2003, the  
14 Department shall allow a distributor 30 days in which to make  
15 final payment of the amount to be paid for such stamps, by  
16 allowing the distributor to make payment for the stamps at the  
17 time of purchasing them with a draft which shall be in such  
18 form as the Department prescribes, and which shall be payable  
19 within 30 days thereafter, and beginning on January 1, 2003 and  
20 thereafter, the draft shall be payable by means of electronic  
21 funds transfer: Provided that such distributor has filed with  
22 the Department, and has received the Department's approval of,  
23 a bond, which is in addition to the bond required under Section  
24 4 of this Act, payable to the Department in an amount equal to  
25 150% of such distributor's average monthly tax liability to the  
26 Department under this Act during the preceding calendar year or

1 \$750,000, whichever is less, except that as to bonds filed on  
2 or after January 1, 1987, such additional bond shall be in an  
3 amount equal to 100% of such distributor's average monthly tax  
4 liability under this Act during the preceding calendar year or  
5 \$750,000, whichever is less. The bond shall be joint and  
6 several and shall be in the form of a surety company bond in  
7 such form as the Department prescribes, or it may be in the  
8 form of a bank certificate of deposit or bank letter of credit.  
9 The bond shall be conditioned upon the distributor's payment of  
10 the amount of any 30-day draft which the Department accepts  
11 from that distributor for the delivery of stamps to that  
12 distributor under this Act. The distributor's failure to pay  
13 any such draft, when due, shall also make such distributor  
14 automatically liable to the Department for a penalty equal to  
15 25% of the amount of such draft.

16 Every prior continuous compliance taxpayer shall be exempt  
17 from all requirements under this Section concerning the  
18 furnishing of such bond, as defined in this Section, as a  
19 condition precedent to his being authorized to engage in the  
20 business licensed under this Act. This exemption shall continue  
21 for each such taxpayer until such time as he may be determined  
22 by the Department to be delinquent in the filing of any  
23 returns, or is determined by the Department (either through the  
24 Department's issuance of a final assessment which has become  
25 final under the Act, or by the taxpayer's filing of a return  
26 which admits tax to be due that is not paid) to be delinquent

1 or deficient in the paying of any tax under this Act, at which  
2 time that taxpayer shall become subject to the bond  
3 requirements of this Section and, as a condition of being  
4 allowed to continue to engage in the business licensed under  
5 this Act, shall be required to furnish bond to the Department  
6 in such form as provided in this Section. Such taxpayer shall  
7 furnish such bond for a period of 2 years, after which, if the  
8 taxpayer has not been delinquent in the filing of any returns,  
9 or delinquent or deficient in the paying of any tax under this  
10 Act, the Department may reinstate such person as a prior  
11 continuance compliance taxpayer. Any taxpayer who fails to pay  
12 an admitted or established liability under this Act may also be  
13 required to post bond or other acceptable security with the  
14 Department guaranteeing the payment of such admitted or  
15 established liability.

16 Any person aggrieved by any decision of the Department  
17 under this Section may, within the time allowed by law, protest  
18 and request a hearing, whereupon the Department shall give  
19 notice and shall hold a hearing in conformity with the  
20 provisions of this Act and then issue its final administrative  
21 decision in the matter to such person. In the absence of such a  
22 protest filed within the time allowed by law, the Department's  
23 decision shall become final without any further determination  
24 being made or notice given.

25 The Department shall discharge any surety and shall release  
26 and return any bond or security deposited, assigned, pledged,

1 or otherwise provided to it by a taxpayer under this Section  
2 within 30 days after:

3 (1) Such taxpayer becomes a prior continuous compliance  
4 taxpayer; or

5 (2) Such taxpayer has ceased to collect receipts on which  
6 he is required to remit tax to the Department, has filed a  
7 final tax return, and has paid to the Department an amount  
8 sufficient to discharge his remaining tax liability as  
9 determined by the Department under this Act. The Department  
10 shall make a final determination of the taxpayer's outstanding  
11 tax liability as expeditiously as possible after his final tax  
12 return has been filed. If the Department cannot make such final  
13 determination within 45 days after receiving the final tax  
14 return, within such period it shall so notify the taxpayer,  
15 stating its reasons therefor.

16 The Department may authorize distributors to affix revenue  
17 tax stamps by imprinting tax meter stamps upon original  
18 packages of cigarettes. The Department shall adopt rules and  
19 regulations relating to the imprinting of such tax meter stamps  
20 as will result in payment of the proper taxes as herein  
21 imposed. No distributor may affix revenue tax stamps to  
22 original packages of cigarettes by imprinting tax meter stamps  
23 thereon unless such distributor has first obtained permission  
24 from the Department to employ this method of affixation. The  
25 Department shall regulate the use of tax meters and may, to  
26 assure the proper collection of the taxes imposed by this Act,

1     revoke or suspend the privilege, theretofore granted by the  
2     Department to any distributor, to imprint tax meter stamps upon  
3     original packages of cigarettes.

4           Illinois cigarette manufacturers who place their  
5     cigarettes in original packages which are contained inside a  
6     sealed transparent wrapper, and similar out-of-State cigarette  
7     manufacturers who elect to qualify and are accepted by the  
8     Department as distributors under Section 4b(a) of this Act,  
9     shall pay the taxes imposed by this Act by remitting the amount  
10    thereof to the Department by the 5th day of each month covering  
11    cigarettes shipped or otherwise delivered in Illinois to  
12    purchasers during the preceding calendar month. Such  
13    manufacturers of cigarettes in original packages which are  
14    contained inside a sealed transparent wrapper, before  
15    delivering such cigarettes or causing such cigarettes to be  
16    delivered in this State to purchasers, shall evidence their  
17    obligation to remit the taxes due with respect to such  
18    cigarettes by imprinting language to be prescribed by the  
19    Department on each original package of such cigarettes  
20    underneath the sealed transparent outside wrapper of such  
21    original package, in such place thereon and in such manner as  
22    the Department may designate. Such imprinted language shall  
23    acknowledge the manufacturer's payment of or liability for the  
24    tax imposed by this Act with respect to the distribution of  
25    such cigarettes.

26           A distributor shall not affix, or cause to be affixed, any

1 stamp or imprint to a package of cigarettes, as provided for in  
2 this Section, if the tobacco product manufacturer, as defined  
3 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
4 that made or sold the cigarettes has failed to become a  
5 participating manufacturer, as defined in subdivision (a)(1)  
6 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
7 or has failed to create a qualified escrow fund for any  
8 cigarettes manufactured by the tobacco product manufacturer  
9 and sold in this State or otherwise failed to bring itself into  
10 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
11 Product Manufacturers' Escrow Act.

12 (Source: P.A. 95-1053, eff. 1-1-10.)

13 (35 ILCS 130/3-10)

14 Sec. 3-10. Cigarette enforcement.

15 (a) Prohibitions. It is unlawful for any person:

16 (1) to sell or distribute in this State; to acquire,  
17 hold, own, possess, or transport, for sale or distribution  
18 in this State; or to import, or cause to be imported into  
19 this State for sale or distribution in this State:

20 (A) any cigarettes the package of which:

21 (i) bears any statement, label, stamp,  
22 sticker, or notice indicating that the  
23 manufacturer did not intend the cigarettes to be  
24 sold, distributed, or used in the United States,  
25 including but not limited to labels stating "For

1           Export Only", "U.S. Tax Exempt", "For Use Outside  
2           U.S.", or similar wording; or

3           (ii) does not comply with:

4           (aa) all requirements imposed by or  
5           pursuant to federal law regarding warnings and  
6           other information on packages of cigarettes  
7           manufactured, packaged, or imported for sale,  
8           distribution, or use in the United States,  
9           including but not limited to the precise  
10          warning labels specified in the federal  
11          Cigarette Labeling and Advertising Act, 15  
12          U.S.C. 1333; and

13          (bb) all federal trademark and copyright  
14          laws;

15          (B) any cigarettes imported into the United States  
16          in violation of 26 U.S.C. 5754 or any other federal  
17          law, or implementing federal regulations;

18          (C) any cigarettes that such person otherwise  
19          knows or has reason to know the manufacturer did not  
20          intend to be sold, distributed, or used in the United  
21          States; or

22          (D) any cigarettes for which there has not been  
23          submitted to the Secretary of the U.S. Department of  
24          Health and Human Services the list or lists of the  
25          ingredients added to tobacco in the manufacture of the  
26          cigarettes required by the federal Cigarette Labeling

1 and Advertising Act, 15 U.S.C. 1335a;

2 (2) to alter the package of any cigarettes, prior to  
3 sale or distribution to the ultimate consumer, so as to  
4 remove, conceal, or obscure:

5 (A) any statement, label, stamp, sticker, or  
6 notice described in subdivision (a)(1)(A)(i) of this  
7 Section;

8 (B) any health warning that is not specified in, or  
9 does not conform with the requirements of, the federal  
10 Cigarette Labeling and Advertising Act, 15 U.S.C.  
11 1333; or

12 (3) to affix any stamp required pursuant to this Act to  
13 the package of any cigarettes described in subdivision  
14 (a)(1) of this Section or altered in violation of  
15 subdivision (a)(2). ~~or~~

16 ~~(4) to knowingly possess, or possess for sale,~~  
17 ~~contraband cigarettes.~~

18 (b) Documentation. On the first business day of each month,  
19 each person licensed to affix the State tax stamp to cigarettes  
20 shall file with the Department, for all cigarettes imported  
21 into the United States to which the person has affixed the tax  
22 stamp in the preceding month:

23 (1) a copy of:

24 (A) the permit issued pursuant to the Internal  
25 Revenue Code, 26 U.S.C. 5713, to the person importing  
26 the cigarettes into the United States allowing the

1 person to import the cigarettes; and

2 (B) the customs form containing, with respect to  
3 the cigarettes, the internal revenue tax information  
4 required by the U.S. Bureau of Alcohol, Tobacco and  
5 Firearms;

6 (2) a statement, signed by the person under penalty of  
7 perjury, which shall be treated as confidential by the  
8 Department and exempt from disclosure under the Freedom of  
9 Information Act, identifying the brand and brand styles of  
10 all such cigarettes, the quantity of each brand style of  
11 such cigarettes, the supplier of such cigarettes, and the  
12 person or persons, if any, to whom such cigarettes have  
13 been conveyed for resale; and a separate statement, signed  
14 by the individual under penalty of perjury, which shall not  
15 be treated as confidential or exempt from disclosure,  
16 separately identifying the brands and brand styles of such  
17 cigarettes; and

18 (3) a statement, signed by an officer of the  
19 manufacturer or importer under penalty of perjury,  
20 certifying that the manufacturer or importer has complied  
21 with:

22 (A) the package health warning and ingredient  
23 reporting requirements of the federal Cigarette  
24 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
25 with respect to such cigarettes; and

26 (B) the provisions of Exhibit T of the Master

1 Settlement Agreement entered in the case of People of  
2 the State of Illinois v. Philip Morris, et al. (Circuit  
3 Court of Cook County, No. 96-L13146), including a  
4 statement indicating whether the manufacturer is, or  
5 is not, a participating tobacco manufacturer within  
6 the meaning of Exhibit T.

7 (c) Administrative sanctions.

8 (1) Upon finding that a distributor or person has  
9 committed any of the acts prohibited by subsection (a),  
10 knowing or having reason to know that he or she has done  
11 so, or has failed to comply with any requirement of  
12 subsection (b), the Department may revoke or suspend the  
13 license or licenses of any distributor pursuant to the  
14 procedures set forth in Section 6 and impose on the  
15 distributor, or on the person, a civil penalty in an amount  
16 not to exceed the greater of 500% of the retail value of  
17 the cigarettes involved or \$5,000.

18 (2) Cigarettes that are acquired, held, owned,  
19 possessed, transported in, imported into, or sold or  
20 distributed in this State in violation of this Section  
21 shall be deemed contraband under this Act and are subject  
22 to seizure and forfeiture as provided in this Act, and all  
23 such cigarettes seized and forfeited shall be destroyed or  
24 maintained and used in an undercover capacity. Such  
25 cigarettes shall be deemed contraband whether the  
26 violation of this Section is knowing or otherwise.

1 (d) Unfair trade practices. In addition to any other  
2 penalties provided for in this Act, a violation of subsection  
3 (a) or subsection (b) of this Section shall constitute an  
4 unlawful practice as provided in the Consumer Fraud and  
5 Deceptive Business Practices Act.

6 (d-1) Retailers shall not be liable under subsections  
7 (c)(1) and (d) of this Section for unknowingly possessing,  
8 selling, or distributing to consumers or users cigarettes  
9 identified in subsection (a)(1) of this Section if the  
10 cigarettes possessed, sold, or distributed by the retailer were  
11 obtained from a distributor licensed under this Act.

12 (e) Unfair cigarette sales. For purposes of the Trademark  
13 Registration and Protection Act and the Counterfeit Trademark  
14 Act, cigarettes imported or reimported into the United States  
15 for sale or distribution under any trade name, trade dress, or  
16 trademark that is the same as, or is confusingly similar to,  
17 any trade name, trade dress, or trademark used for cigarettes  
18 manufactured in the United States for sale or distribution in  
19 the United States shall be presumed to have been purchased  
20 outside of the ordinary channels of trade.

21 (f) General provisions.

22 (1) This Section shall be enforced by the Department;  
23 provided that, at the request of the Director of Revenue or  
24 the Director's duly authorized agent, the State police and  
25 all local police authorities shall enforce the provisions  
26 of this Section. The Attorney General has concurrent power

1 with the State's Attorney of any county to enforce this  
2 Section.

3 (2) For the purpose of enforcing this Section, the  
4 Director of Revenue and any agency to which the Director  
5 has delegated enforcement responsibility pursuant to  
6 subdivision (f)(1) may request information from any State  
7 or local agency and may share information with and request  
8 information from any federal agency and any agency of any  
9 other state or any local agency of any other state.

10 (3) In addition to any other remedy provided by law,  
11 including enforcement as provided in subdivision (a)(1),  
12 any person may bring an action for appropriate injunctive  
13 or other equitable relief for a violation of this Section;  
14 actual damages, if any, sustained by reason of the  
15 violation; and, as determined by the court, interest on the  
16 damages from the date of the complaint, taxable costs, and  
17 reasonable attorney's fees. If the trier of fact finds that  
18 the violation is flagrant, it may increase recovery to an  
19 amount not in excess of 3 times the actual damages  
20 sustained by reason of the violation.

21 (g) Definitions. As used in this Section:

22 "Importer" means that term as defined in 26 U.S.C. 5702(1).

23 "Package" means that term as defined in 15 U.S.C. 1332(4).

24 (h) Applicability.

25 (1) This Section does not apply to:

26 (A) cigarettes allowed to be imported or brought

1 into the United States for personal use; and

2 (B) cigarettes sold or intended to be sold as  
3 duty-free merchandise by a duty-free sales enterprise  
4 in accordance with the provisions of 19 U.S.C. 1555(b)  
5 and any implementing regulations; except that this  
6 Section shall apply to any such cigarettes that are  
7 brought back into the customs territory for resale  
8 within the customs territory.

9 (2) The penalties provided in this Section are in  
10 addition to any other penalties imposed under other  
11 provision of law.

12 (Source: P.A. 95-1053, eff. 1-1-10.)

13 (35 ILCS 130/4) (from Ch. 120, par. 453.4)

14 Sec. 4. Distributor's license. No person may engage in  
15 business as a distributor of cigarettes in this State within  
16 the meaning of the first 2 definitions of distributor in  
17 Section 1 of this Act without first having obtained a license  
18 therefor from the Department. Application for license shall be  
19 made to the Department in form as furnished and prescribed by  
20 the Department. Each applicant for a license under this Section  
21 shall furnish to the Department on the form signed and verified  
22 by the applicant under penalty of perjury the following  
23 information:

24 (a) The name and address of the applicant;

25 (b) The address of the location at which the applicant

1 proposes to engage in business as a distributor of  
2 cigarettes in this State;

3 (c) Such other additional information as the  
4 Department may lawfully require by its rules and  
5 regulations.

6 The annual license fee payable to the Department for each  
7 distributor's license shall be \$250. The purpose of such annual  
8 license fee is to defray the cost, to the Department, of  
9 serializing cigarette tax stamps. Each applicant for license  
10 shall pay such fee to the Department at the time of submitting  
11 his application for license to the Department.

12 Every applicant who is required to procure a distributor's  
13 license shall file with his application a joint and several  
14 bond. Such bond shall be executed to the Department of Revenue,  
15 with good and sufficient surety or sureties residing or  
16 licensed to do business within the State of Illinois, in the  
17 amount of \$2,500, conditioned upon the true and faithful  
18 compliance by the licensee with all of the provisions of this  
19 Act. Such bond, or a reissue thereof, or a substitute therefor,  
20 shall be kept in effect during the entire period covered by the  
21 license. A separate application for license shall be made, a  
22 separate annual license fee paid, and a separate bond filed,  
23 for each place of business at which a person who is required to  
24 procure a distributor's license under this Section proposes to  
25 engage in business as a distributor in Illinois under this Act.

26 The following are ineligible to receive a distributor's

1 license under this Act:

2 (1) a person who is not of good character and  
3 reputation in the community in which he resides;

4 (2) a person who has been convicted of a felony  
5 under any Federal or State law, if the Department,  
6 after investigation and a hearing, if requested by the  
7 applicant, determines that such person has not been  
8 sufficiently rehabilitated to warrant the public  
9 trust;

10 (3) a corporation, if any officer, manager or  
11 director thereof, or any stockholder or stockholders  
12 owning in the aggregate more than 5% of the stock of  
13 such corporation, would not be eligible to receive a  
14 license under this Act for any reason;~~;~~

15 (4) a person, or any person who owns more than 15  
16 percent of the ownership interests in a person or a  
17 related party who:

18 (a) owes, at the time of application, any ~~\$500~~  
19 ~~or more in~~ delinquent cigarette taxes that have  
20 been determined by law to be due and unpaid, unless  
21 the license applicant has entered into an  
22 agreement approved by the Department to pay the  
23 amount due;

24 (b) had a license under this Act revoked within  
25 the past two years by the Department for ~~willful~~  
26 misconduct relating to stolen or contraband

1 cigarettes or has been convicted of a State or  
2 federal crime, punishable by imprisonment of one  
3 year or more, relating to stolen or contraband  
4 cigarettes;

5 (c) ~~is a distributor who~~ manufactures  
6 cigarettes, whether in this State or out of this  
7 State, and who is neither (i) a participating  
8 manufacturer as defined in subsection II(jj) of  
9 the "Master Settlement Agreement" as defined in  
10 Sections 10 of the Tobacco Products Manufacturers'  
11 Escrow Act and the Tobacco Products Manufacturers'  
12 Escrow Enforcement Act of 2003 (30 ILCS 168/10 and  
13 30 ILCS 167/10); nor (ii) in full compliance with  
14 Tobacco Products Manufacturers' Escrow Act and the  
15 Tobacco Products Manufacturers' Escrow Enforcement  
16 Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

17 (d) has been found by the Department, after  
18 notice and a hearing, to have ~~willfully~~ imported or  
19 caused to be imported into the United States for  
20 sale or distribution any cigarette in violation of  
21 19 U.S.C. 1681a;

22 (e) has been found by the Department, after  
23 notice and a hearing, to have ~~willfully~~ imported or  
24 caused to be imported into the United States for  
25 sale or distribution or manufactured for sale or  
26 distribution in the United States any cigarette

1           that does not fully comply with the Federal  
2           Cigarette Labeling and Advertising Act (15 U.S.C.  
3           1331, et seq.); or

4                   (f) has been found by the Department, after  
5                   notice and a hearing, to have ~~willfully~~ made a  
6                   material false statement in the application or has  
7                   ~~willfully~~ failed to produce records required to be  
8                   maintained by this Act.

9           The Department, upon receipt of an application, license fee  
10          and bond in proper form, from a person who is eligible to  
11          receive a distributor's license under this Act, shall issue to  
12          such applicant a license in form as prescribed by the  
13          Department, which license shall permit the applicant to which  
14          it is issued to engage in business as a distributor at the  
15          place shown in his application. All licenses issued by the  
16          Department under this Act shall be valid for not to exceed one  
17          year after issuance unless sooner revoked, canceled or  
18          suspended as provided in this Act. No license issued under this  
19          Act is transferable or assignable. Such license shall be  
20          conspicuously displayed in the place of business conducted by  
21          the licensee in Illinois under such license. No distributor  
22          licensee acquires any vested interest or compensable property  
23          right in a license issued under this Act.

24          A licensed distributor shall notify the Department of any  
25          change in the information contained on the application form,  
26          including any change in ownership and shall do so within 30

1 days after any such change.

2 Any person aggrieved by any decision of the Department  
3 under this Section may, within 20 days after notice of the  
4 decision, protest and request a hearing. Upon receiving a  
5 request for a hearing, the Department shall give notice to the  
6 person requesting the hearing of the time and place fixed for  
7 the hearing and shall hold a hearing in conformity with the  
8 provisions of this Act and then issue its final administrative  
9 decision in the matter to that person. In the absence of a  
10 protest and request for a hearing within 20 days, the  
11 Department's decision shall become final without any further  
12 determination being made or notice given.

13 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

14 (35 ILCS 130/4b) (from Ch. 120, par. 453.4b)

15 Sec. 4b.

16 (a) The Department may, in its discretion, upon  
17 application, issue permits authorizing the payment of the tax  
18 herein imposed by out-of-State cigarette manufacturers who are  
19 not required to be licensed as distributors of cigarettes in  
20 this State, but who elect to qualify under this Act as  
21 distributors of cigarettes in this State, and who, to the  
22 satisfaction of the Department, furnish adequate security to  
23 insure payment of the tax, provided that any such permit shall  
24 extend only to cigarettes which such permittee manufacturer  
25 places in original packages that are contained inside a sealed

1 transparent wrapper. Such permits shall be issued without  
2 charge in such form as the Department may prescribe and shall  
3 not be transferable or assignable.

4 The following are ineligible to receive a distributor's  
5 permit under this subsection ~~Act~~:

6 (1) a person who is not of good character and reputation in  
7 the community in which he resides;

8 (2) a person who has been convicted of a felony under any  
9 Federal or State law, if the Department, after investigation  
10 and a hearing, if requested by the applicant, determines that  
11 such person has not been sufficiently rehabilitated to warrant  
12 the public trust;

13 (3) a corporation, if any officer, manager or director  
14 thereof, or any stockholder or stockholders owning in the  
15 aggregate more than 5% of the stock of such corporation, would  
16 not be eligible to receive a permit under this Act for any  
17 reason.

18 With respect to cigarettes which come within the scope of  
19 such a permit and which any such permittee delivers or causes  
20 to be delivered in Illinois to licensed distributors  
21 ~~purchasers~~, such permittee shall remit the tax imposed by this  
22 Act at the times provided for in Section 3 of this Act. Each  
23 such remittance shall be accompanied by a return filed with the  
24 Department on a form to be prescribed and furnished by the  
25 Department and shall disclose such information as the  
26 Department may lawfully require. The Department may promulgate

1 rules to require that the permittee's return be accompanied by  
2 appropriate computer-generated magnetic media supporting  
3 schedule data in the format prescribed by the Department,  
4 unless, as provided by rule, the Department grants an exception  
5 upon petition of the permittee. Each such return shall be  
6 accompanied by a copy of each invoice rendered by the permittee  
7 to any licensed distributor ~~purchaser~~ to whom the permittee  
8 delivered cigarettes of the type covered by the permit (or  
9 caused cigarettes of the type covered by the permit to be  
10 delivered) in Illinois during the period covered by such  
11 return.

12 Such permit may be suspended, canceled or revoked when, at  
13 any time, the Department considers that the security given is  
14 inadequate, or that such tax can more effectively be collected  
15 from distributors located in this State, or whenever the  
16 permittee violates any provision of this Act or any lawful rule  
17 or regulation issued by the Department pursuant to this Act or  
18 is determined to be ineligible for a distributor's permit under  
19 this Act as provided in this Section, whenever the permittee  
20 shall notify the Department in writing of his desire to have  
21 the permit canceled. The Department shall have the power, in  
22 its discretion, to issue a new permit after such suspension,  
23 cancellation or revocation, except when the person who would  
24 receive the permit is ineligible to receive a distributor's  
25 permit under this Act.

26 All permits issued by the Department under this Act shall

1 be valid for not to exceed one year after issuance unless  
2 sooner revoked, canceled or suspended as in this Act provided.

3 (b) Out-of-state cigarette manufacturers who are not  
4 required to be licensed as distributors of cigarettes in this  
5 State and who do not elect to obtain approval under subsection  
6 4b(a) to pay the tax imposed by this Act, but who elect to  
7 qualify under this Act as distributors of cigarettes in this  
8 State for purposes of shipping and delivering unstamped  
9 original packages of cigarettes into this State to licensed  
10 distributors, shall obtain a permit from the Department. These  
11 permits shall be issued without charge in such form as the  
12 Department may prescribe and shall not be transferable or  
13 assignable.

14 The following are ineligible to receive a distributor's  
15 permit under this subsection:

16 (1) a person who is not of good character and  
17 reputation in the community in which he or she resides;

18 (2) a person who has been convicted of a felony under  
19 any federal or State law, if the Department, after  
20 investigation and a hearing, if requested by the applicant,  
21 determines that the person has not been sufficiently  
22 rehabilitated to warrant the public trust; and

23 (3) a corporation, if any officer, manager, or director  
24 thereof, or any stockholder or stockholders owning in the  
25 aggregate more than 5% of the stock of the corporation,  
26 would not be eligible to receive a permit under this Act

1       for any reason.

2       With respect to original packages of cigarettes that such  
3 permittee delivers or causes to be delivered in Illinois and  
4 distributes to the public for promotional purposes without  
5 consideration, the permittee shall pay the tax imposed by this  
6 Act by remitting the amount thereof to the Department by the  
7 5th day of each month covering cigarettes shipped or otherwise  
8 delivered in Illinois for those purposes during the preceding  
9 calendar month. The permittee, before delivering those  
10 cigarettes or causing those cigarettes to be delivered in this  
11 State, shall evidence his or her obligation to remit the taxes  
12 due with respect to those cigarettes by imprinting language to  
13 be prescribed by the Department on each original package of  
14 cigarettes, in such place thereon and in such manner also to be  
15 prescribed by the Department. The imprinted language shall  
16 acknowledge the permittee's payment of or liability for the tax  
17 imposed by this Act with respect to the distribution of those  
18 cigarettes.

19       With respect to cigarettes that the permittee delivers or  
20 causes to be delivered in Illinois to Illinois licensed  
21 distributors or distributed to the public for promotional  
22 purposes, the permittee shall, by the 5th day of each month,  
23 file with the Department, a report covering cigarettes shipped  
24 or otherwise delivered in Illinois to licensed distributors or  
25 distributed to the public for promotional purposes during the  
26 preceding calendar month on a form to be prescribed and

1 furnished by the Department and shall disclose such other  
2 information as the Department may lawfully require. The  
3 Department may promulgate rules to require that the permittee's  
4 report be accompanied by appropriate computer-generated  
5 magnetic media supporting schedule data in the format  
6 prescribed by the Department, unless, as provided by rule, the  
7 Department grants an exception upon petition of the permittee.  
8 Each such report shall be accompanied by a copy of each invoice  
9 rendered by the permittee to any purchaser to whom the  
10 permittee delivered cigarettes of the type covered by the  
11 permit (or caused cigarettes of the type covered by the permit  
12 to be delivered) in Illinois during the period covered by such  
13 report.

14 Such permit may be suspended, canceled, or revoked whenever  
15 the permittee violates any provision of this Act or any lawful  
16 rule or regulation issued by the Department pursuant to this  
17 Act, is determined to be ineligible for a distributor's permit  
18 under this Act as provided in this Section, or notifies the  
19 Department in writing of his or her desire to have the permit  
20 canceled. The Department shall have the power, in its  
21 discretion, to issue a new permit after such suspension,  
22 cancellation, or revocation, except when the person who would  
23 receive the permit is ineligible to receive a distributor's  
24 permit under this Act.

25 All permits issued by the Department under this Act shall  
26 be valid for a period not to exceed one year after issuance

1 unless sooner revoked, canceled, or suspended as provided in  
2 this Act.

3 (Source: P.A. 79-387.)

4 (35 ILCS 130/4d)

5 Sec. 4d. Sales of cigarettes to and by retailers.  
6 ~~Transactions only with licensed distributors, out of state~~  
7 ~~manufacturers holding a permit, and retailers holding a~~  
8 ~~certificate of registration. In-state makers, manufacturers,~~  
9 ~~and fabricators licensed as distributors under Section 4 of~~  
10 ~~this Act and out-of-state makers, manufacturers, and~~  
11 ~~fabricators holding permits under Section 4b of this Act may~~  
12 ~~not sell original packages of cigarettes to retailers. A~~  
13 ~~retailer may sell only original packages of cigarettes obtained~~  
14 ~~from licensed distributors other than in-state makers,~~  
15 ~~manufacturers, or fabricators licensed as distributors under~~  
16 ~~Section 4 of this Act and out-of-state makers, manufacturers,~~  
17 ~~or fabricators holding permits under Section 4b of this Act. A~~  
18 ~~distributor or manufacturer may sell or distribute cigarettes~~  
19 ~~to a person located or doing business within this State only if~~  
20 ~~such person is a licensed distributor or a retailer holding a~~  
21 ~~certificate of registration. A retailer may only sell~~  
22 ~~cigarettes obtained from a licensed distributor or an~~  
23 ~~out-of-state manufacturer holding a permit.~~

24 (Source: P.A. 95-1053, eff. 1-1-10.)

1 (35 ILCS 130/9c) (from Ch. 120, par. 453.9c)

2 (Section scheduled to be repealed on January 1, 2010)

3 Sec. 9c. "Transporter" means any person transporting into  
4 or within this State original packages of cigarettes that are  
5 not tax stamped as required by this Act, except:

6 (a) a person transporting into this State unstamped  
7 original packages containing a total of not more than 2,000  
8 cigarettes in any single lot or shipment;

9 (b) a licensed cigarette distributor under this Act;

10 (c) a common carrier;

11 (d) a person transporting cigarettes under federal  
12 internal bond or custom control that are non-tax paid under  
13 Chapter 52 of the Internal Revenue Code of 1954, as amended;

14 (e) a person engaged in transporting cigarettes to a  
15 licensed distributor under the Illinois Cigarette Tax Act or  
16 the Illinois Cigarette Use Tax Act, or under the laws of any  
17 other state, and who has in his or her possession during the  
18 course of transporting those cigarettes a bill of lading,  
19 waybill, or other similar commercial document that was issued  
20 by or for a manufacturer of cigarettes who holds a valid permit  
21 as a cigarette manufacturer under Chapter 52 of the Internal  
22 Revenue Code of 1954, as amended, and that shows that the  
23 cigarettes are being transported by or at the direction of that  
24 manufacturer to that licensed distributor.

25 Any transporter desiring to possess or acquire for  
26 transportation or transport upon the highways, roads, or

1 streets of this State more than 2,000 cigarettes that are not  
2 contained in original packages that are Illinois tax stamped  
3 shall obtain a permit from the Department authorizing that  
4 transporter to possess or acquire for transportation or  
5 transport the cigarettes, and he or she shall have the permit  
6 in the transporting vehicle during the period of transportation  
7 of the cigarettes. The application for the permit shall be in  
8 such form and shall contain such information as may be  
9 prescribed by the Department. The Department may issue a permit  
10 for a single load or shipment or for a number of loads or  
11 shipments to be transported under specified conditions.

12 Any cigarettes transported on the highways, roads, or  
13 streets of this State under conditions that violate any  
14 requirement of this Section, and the vehicle containing those  
15 cigarettes, are subject to seizure by the Department, and to  
16 confiscation and forfeiture in the same manner as is provided  
17 for in Section 18a of this Act.

18 Any person who violates any requirement of this Section is  
19 guilty of a Class 4 felony.

20 Any transporter who, with intent to defeat or evade or with  
21 intent to aid another to defeat or evade the tax imposed by  
22 this Act, at any given time, transports 40,000 or more  
23 cigarettes upon the highways, roads, or streets of this State  
24 under conditions that violate any requirement of this Section  
25 is guilty of a Class 3 felony.

26 ~~"Transporter" means any person transporting into or within this~~

1 ~~State original packages of cigarettes which are not tax stamped~~  
2 ~~as required by this Act, except:~~

3 ~~(a) A person transporting into this State unstamped~~  
4 ~~original packages containing a total of not more than 2000~~  
5 ~~cigarettes in any single lot or shipment;~~

6 ~~(b) a licensed cigarette distributor under this Act;~~

7 ~~(c) a common carrier;~~

8 ~~(d) a person transporting cigarettes under Federal~~  
9 ~~internal bond or custom control that are non tax paid under~~  
10 ~~Chapter 52 of the Internal Revenue Code of 1954, as amended;~~

11 ~~(e) a person engaged in transporting cigarettes to a~~  
12 ~~cigarette dealer who is properly licensed as a distributor~~  
13 ~~under the Illinois Cigarette Tax Act or the Illinois Cigarette~~  
14 ~~Use Tax Act, or under the laws of any other state, and who has~~  
15 ~~in his possession during the course of transporting such~~  
16 ~~cigarettes a bill of lading, waybill, or other similar~~  
17 ~~commercial document which was issued by or for a manufacturer~~  
18 ~~of cigarettes who holds a valid permit as a cigarette~~  
19 ~~manufacturer under Chapter 52, Internal Revenue Code of 1954,~~  
20 ~~as subsequently amended, and which shows that the cigarettes~~  
21 ~~are being transported by or at the direction of such~~  
22 ~~manufacturer to such licensed cigarette dealer.~~

23 ~~Any transporter desiring to possess or acquire for~~  
24 ~~transportation or transport upon the highways, roads or streets~~  
25 ~~of this State more than 2000 cigarettes which are not contained~~  
26 ~~in original packages that are Illinois tax stamped shall obtain~~

1 ~~a permit from the Department authorizing such transporter to~~  
2 ~~possess or acquire for transportation or transport the~~  
3 ~~cigarettes, and he shall have the permit in the transporting~~  
4 ~~vehicle during the period of transportation of the cigarettes.~~  
5 ~~The application for the permit shall be in such form and shall~~  
6 ~~contain such information as may be prescribed by the~~  
7 ~~Department. The Department may issue a permit for a single load~~  
8 ~~or shipment or for a number of loads or shipments to be~~  
9 ~~transported under specified conditions.~~

10 ~~Any cigarettes transported on the highways, roads or~~  
11 ~~streets of this State under conditions which violate any~~  
12 ~~requirement of this Section, and the vehicle containing such~~  
13 ~~cigarettes, are subject to seizure by the Department, and to~~  
14 ~~confiscation and forfeiture in the same manner as is provided~~  
15 ~~for in Section 18a of this Act. Any such confiscated and~~  
16 ~~forfeited property shall be sold in the same manner and under~~  
17 ~~the same conditions as provided for in Section 21 of this Act,~~  
18 ~~with the proceeds from any such sale being deposited in the~~  
19 ~~State Treasury.~~

20 ~~Any person who violates any requirement of this Section is~~  
21 ~~guilty of a Class 4 felony.~~

22 ~~Any transporter who, with intent to defeat or evade or with~~  
23 ~~intent to aid another to defeat or evade the tax imposed by~~  
24 ~~this Act, at any given time, transports 40,000 or more~~  
25 ~~cigarettes upon the highways, roads or streets of this State~~  
26 ~~under conditions which violate any requirement of this Section~~

1 ~~shall be guilty of a Class 3 felony.~~

2 (Source: P.A. 83-1428. Repealed by P.A. 95-1053, eff. 1-1-10.)

3 (35 ILCS 130/18) (from Ch. 120, par. 453.18)

4 Sec. 18. Any duly authorized employee of the Department may  
5 arrest without warrant any person committing in his presence a  
6 violation of any of the provisions of this Act, and may without  
7 a search warrant inspect all cigarettes located in any place of  
8 business and seize any original packages of contraband  
9 cigarettes ~~not tax stamped or tax imprinted underneath the~~  
10 ~~sealed transparent wrapper of such original packages in~~  
11 ~~accordance with the provisions of this Act~~ and any vending  
12 device in which such packages may be found, and such original  
13 packages or vending devices so seized shall be subject to  
14 confiscation and forfeiture as hereinafter provided.

15 (Source: P.A. 82-1009.)

16 (35 ILCS 130/18a) (from Ch. 120, par. 453.18a)

17 Sec. 18a. After seizing any original packages of  
18 cigarettes, or cigarette vending devices, as provided in  
19 Section 18 of this Act, the Department shall hold a hearing and  
20 shall determine whether such original packages of cigarettes,  
21 at the time of their seizure by the Department, were contraband  
22 cigarettes ~~not tax stamped or tax imprinted underneath the~~  
23 ~~sealed transparent wrapper of such original packages in~~  
24 ~~accordance with this Act~~, or whether such cigarette vending

1 devices, at the time of their seizure by the Department,  
2 contained original packages of contraband cigarettes ~~not tax~~  
3 ~~stamped or tax imprinted underneath the sealed transparent~~  
4 ~~wrapper of such original packages as required by this Act.~~ The  
5 Department shall give not less than 7 days' notice of the time  
6 and place of such hearing to the owner of such property if he  
7 is known, and also to the person in whose possession the  
8 property so taken was found, if such person is known and if  
9 such person in possession is not the owner of said property. In  
10 case neither the owner nor the person in possession of such  
11 property is known, the Department shall cause publication of  
12 the time and place of such hearing to be made at least once in  
13 each week for 3 weeks successively in a newspaper of general  
14 circulation in the county where such hearing is to be held.

15 If, as the result of such hearing, the Department shall  
16 determine that the original packages of cigarettes seized were  
17 at the time of seizure contraband cigarettes ~~not tax stamped or~~  
18 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
19 ~~original packages as required by this Act,~~ or that any  
20 cigarette vending device at the time of its seizure contained  
21 original packages of contraband cigarettes ~~not tax stamped or~~  
22 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
23 ~~original packages as required by this Act,~~ the Department shall  
24 enter an order declaring such original packages of cigarettes  
25 or such cigarette vending devices confiscated and forfeited to  
26 the State, and to be held by the Department for disposal by it

1 as provided in Section 21 of this Act. The Department shall  
2 give notice of such order to the owner of such property if he  
3 is known, and also to the person in whose possession the  
4 property so taken was found, if such person is known and if  
5 such person in possession is not the owner of said property. In  
6 case neither the owner nor the person in possession of such  
7 property is known, the Department shall cause publication of  
8 such order to be made at least once in each week for 3 weeks  
9 successively in a newspaper of general circulation in the  
10 county where such hearing was held.

11 (Source: P.A. 76-684.)

12 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

13 Sec. 18b. Possession of more than 100 original packages of  
14 contraband cigarettes; penalty. With the exception of licensed  
15 distributors and transporters, as defined in Section 9c of this  
16 Act, possessing unstamped original packages of cigarettes, and  
17 licensed distributors possessing original packages of  
18 cigarettes that bear a tax stamp of another state or taxing  
19 jurisdiction, anyone possessing contraband cigarettes  
20 contained in original packages ~~is which are not tax stamped as~~  
21 ~~required by this Act, or which are improperly tax stamped,~~  
22 ~~shall be~~ liable to pay, to the Department for deposit in the  
23 Tax Compliance and Administration Fund ~~State Treasury,~~ a  
24 penalty of \$25 ~~\$15~~ for each such package of cigarettes in  
25 excess of 100 packages, unless reasonable cause can be

1 established by the person upon whom the penalty is imposed.  
2 This penalty is in addition to the taxes imposed by this Act.  
3 Reasonable cause shall be determined in each situation in  
4 accordance with rules adopted by the Department. The provisions  
5 of the Uniform Penalty and Interest Act do not apply to this  
6 Section. Such penalty may be recovered by the Department in a  
7 civil action.

8 (Source: P.A. 83-1428.)

9 (35 ILCS 130/18c)

10 Sec. 18c. Possession of not less than 10 and not more than  
11 100 original packages of contraband cigarettes ~~not tax stamped~~  
12 ~~or improperly tax stamped~~; penalty. With the exception of  
13 licensed distributors and transporters, as defined in Section  
14 9c of this Act, possessing unstamped original packages of  
15 cigarettes, and licensed distributors possessing original  
16 packages of cigarettes that bear a tax stamp of another state  
17 or taxing jurisdiction, anyone possessing not less than 10 and  
18 not more than 100 packages of contraband cigarettes contained  
19 in original packages ~~that are not tax stamped as required by~~  
20 ~~this Act, or that are improperly tax stamped~~, is liable to pay  
21 to the Department, for deposit into the Tax Compliance and  
22 Administration Fund, a penalty of \$10 for each such package of  
23 cigarettes, unless reasonable cause can be established by the  
24 person upon whom the penalty is imposed. Reasonable cause shall  
25 be determined in each situation in accordance with rules

1 adopted by the Department. The provisions of the Uniform  
2 Penalty and Interest Act do not apply to this Section.

3 (Source: P.A. 92-322, eff. 1-1-02.)

4 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

5 Sec. 20. Whenever any peace officer of the State or any  
6 duly authorized officer or employee of the Department shall  
7 have reason to believe that any violation of this Act has  
8 occurred and that the person so violating the Act has in his,  
9 her or its possession any original package of contraband  
10 cigarettes, not tax stamped or tax imprinted underneath the  
11 sealed transparent wrapper of such original package as required  
12 by this Act, or any vending device containing such original  
13 packages of contraband cigarettes to which stamps have not been  
14 affixed, or on which an authorized substitute for stamps has  
15 not been imprinted underneath the sealed transparent wrapper of  
16 such original packages, as required by this Act, he may file or  
17 cause to be filed his complaint in writing, verified by  
18 affidavit, with any court within whose jurisdiction the  
19 premises to be searched are situated, stating the facts upon  
20 which such belief is founded, the premises to be searched, and  
21 the property to be seized, and procure a search warrant and  
22 execute the same. Upon the execution of such search warrant,  
23 the peace officer, or officer or employee of the Department,  
24 executing such search warrant shall make due return thereof to  
25 the court issuing the same, together with an inventory of the

1 property taken thereunder. The court shall thereupon issue  
2 process against the owner of such property if he is known;  
3 otherwise, such process shall be issued against the person in  
4 whose possession the property so taken is found, if such person  
5 is known. In case of inability to serve such process upon the  
6 owner or the person in possession of the property at the time  
7 of its seizure, as hereinbefore provided, notice of the  
8 proceedings before the court shall be given as required by the  
9 statutes of the State governing cases of Attachment. Upon the  
10 return of the process duly served or upon the posting or  
11 publishing of notice made, as hereinabove provided, the court  
12 or jury, if a jury shall be demanded, shall proceed to  
13 determine whether or not such property so seized was held or  
14 possessed in violation of this Act, or whether, if a vending  
15 device has been so seized, it contained at the time of its  
16 seizure original packages of contraband cigarettes ~~not tax~~  
17 ~~stamped or tax imprinted underneath the sealed transparent~~  
18 ~~wrapper of such original packages as required by this Act.~~ In  
19 case of a finding that the original packages seized were  
20 contraband cigarettes ~~not tax stamped or tax imprinted~~  
21 ~~underneath the sealed transparent wrapper of such original~~  
22 ~~packages in accordance with the provisions of this Act,~~ or that  
23 any vending device so seized contained at the time of its  
24 seizure original packages of contraband cigarettes ~~not tax~~  
25 ~~stamped or tax imprinted underneath the sealed transparent~~  
26 ~~wrapper of such original packages in accordance with the~~

1 ~~provisions of this Act~~, judgment shall be entered confiscating  
2 and forfeiting the property to the State and ordering its  
3 delivery to the Department, and in addition thereto, the court  
4 shall have power to tax and assess the costs of the  
5 proceedings.

6 When any original packages or any cigarette vending device  
7 shall have been declared forfeited to the State by any court,  
8 as hereinbefore provided, and when such confiscated and  
9 forfeited property shall have been delivered to the Department,  
10 as provided in this Act, the said Department shall destroy or  
11 maintain and use such property in an undercover capacity. The  
12 Department may, prior to any destruction of cigarettes, permit  
13 the true holder of the trademark rights in the cigarette brand  
14 to inspect such contraband cigarettes, in order to assist the  
15 Department in any investigation regarding such cigarettes.

16 (Source: P.A. 95-1053, eff. 1-1-10.)

17 (35 ILCS 130/24) (from Ch. 120, par. 453.24)

18 Sec. 24. Punishment for sale or possession of ~~unstamped~~  
19 packages of contraband cigarettes.

20 (a) Possession or sale of 100 or less packages of  
21 contraband cigarettes. With the exception of licensed  
22 distributors or transporters, as defined in Section 9c of this  
23 Act, any person who has in his or her possession or sells 100  
24 or less original packages of contraband cigarettes is guilty of  
25 a Class A misdemeanor.

1       (b) Possession or sale of more than 100 but less than 251  
2 packages of contraband cigarettes. With the exception of  
3 licensed distributors or transporters, as defined in Section 9c  
4 of this Act, any person who has in his or her possession or  
5 sells more than 100 but less than 251 original packages of  
6 contraband cigarettes is guilty of a Class A misdemeanor for a  
7 first offense and a Class 4 felony for each subsequent offense.

8       (c) Possession or sale of more than 250 but less than 1,001  
9 packages of contraband cigarettes. With the exception of  
10 licensed distributors or transporters, as defined in Section 9c  
11 of this Act, any person who has in his or her possession or  
12 sells more than 250 but less than 1,001 original packages of  
13 contraband cigarettes is guilty of a Class 4 felony.

14       (d) Possession or sale of more than 1,000 packages of  
15 contraband cigarettes. With the exception of licensed  
16 distributors or transporters, as defined in Section 9c of this  
17 Act, any person who has in his or her possession or sells more  
18 than 1,000 original packages of contraband cigarettes is guilty  
19 of a Class 3 felony.

20       (e) Any person licensed as a distributor or transporter, as  
21 defined in Section 9c of this Act, who has in his or her  
22 possession or sells 100 or less original packages of contraband  
23 cigarettes is guilty of a Class A misdemeanor.

24       (f) Any person licensed as a distributor or transporter, as  
25 defined in Section 9c of this Act, who has in his or her  
26 possession or sells more than 100 original packages of

1 contraband cigarettes is guilty of a Class 4 felony.

2 (g) Notwithstanding subsections (e) through (f), licensed  
3 distributors and transporters, as defined in Section 9c of this  
4 Act, may possess unstamped packages of cigarettes.  
5 Notwithstanding subsections (e) through (f), licensed  
6 distributors may possess cigarettes that bear a tax stamp of  
7 another state or taxing jurisdiction. Notwithstanding  
8 subsections (e) through (f), a licensed distributor may possess  
9 contraband cigarettes returned to the distributor by a retailer  
10 if the distributor immediately conducts an inventory of the  
11 cigarettes being returned, the distributor and the retailer  
12 returning the contraband cigarettes sign the inventory, the  
13 distributor provides a copy of the signed inventory to the  
14 retailer, and the distributor retains the inventory in its  
15 books and records and promptly notifies the Department of  
16 Revenue.

17 (h) Notwithstanding subsections (a) through (d) of this  
18 Section, a retailer unknowingly possessing contraband  
19 cigarettes obtained from a licensed distributor or knowingly  
20 possessing contraband cigarettes obtained from a licensed  
21 distributor is not subject to penalties under this Section if  
22 the retailer, within 48 hours after discovering that the  
23 cigarettes are contraband cigarettes, excluding Saturdays,  
24 Sundays, and holidays: (i) notifies the Department and the  
25 licensed distributor from whom the cigarettes were obtained,  
26 orally and in writing, that he or she possesses contraband

1 cigarettes obtained from a licensed distributor; (ii) places  
2 the contraband cigarettes in one or more containers and seals  
3 those containers; and (iii) places on the containers the  
4 following or similar language: "Contraband Cigarettes. Not For  
5 Sale." All contraband cigarettes in the possession of a  
6 retailer remain subject to forfeiture under the provisions of  
7 this Act.

8 ~~(a) Any person other than a licensed distributor who sells,~~  
9 ~~offers for sale, or has in his possession with intent to sell~~  
10 ~~or offer for sale, more than 100 original packages, not tax~~  
11 ~~stamped or tax imprinted underneath the sealed transparent~~  
12 ~~wrapper of such original package in accordance with this Act,~~  
13 ~~shall be guilty of a Class 4 felony.~~

14 ~~(a-5) Any person other than a licensed distributor who~~  
15 ~~sells, offers for sale, or has in his possession with intent to~~  
16 ~~sell or offer for sale, 100 or fewer original packages, not tax~~  
17 ~~stamped or tax imprinted underneath the sealed transparent~~  
18 ~~wrapper of the original package in accordance with this Act, is~~  
19 ~~guilty of a Class A misdemeanor for the first offense and a~~  
20 ~~Class 4 felony for each subsequent offense.~~

21 ~~(b) Any distributor who sells an original package of~~  
22 ~~cigarettes, not tax stamped or tax imprinted underneath the~~  
23 ~~sealed transparent wrapper of such original package in~~  
24 ~~accordance with this Act, except when the sale is made under~~  
25 ~~such circumstances that the tax imposed by this Act may not~~  
26 ~~legally be levied because of the Constitution or laws of the~~

1 ~~United States, shall be guilty of a Class 3 felony.~~

2 (Source: P.A. 92-322, eff. 1-1-02.)

3 (35 ILCS 130/28a new)

4 Sec. 28a. If, at the time of terminating his or her  
5 business, any licensed distributor has on hand unused stamps,  
6 the distributor or his or her legal representative may, after  
7 Department approval, transfer or sell those unused stamps to  
8 another distributor licensed under this Act. The transferring  
9 distributor, or his or her legal representative, shall report  
10 to the Department in writing an intention to so sell or  
11 transfer the stamps and the name and address of the distributor  
12 to whom the sale or transfer is to be made, together with the  
13 total of the face amount of each denomination of stamps to be  
14 so sold or transferred. The Department shall approve or  
15 disapprove the requested transfer within 48 hours after  
16 receiving the report. Approval shall be deemed granted if not  
17 received by the distributor within 5 business days after the  
18 Department's receipt of the report.

19 (35 ILCS 130/3-15 rep.)

20 Section 10. The Cigarette Tax Act is amended by repealing  
21 Section 3-15.

22 Section 15. The Cigarette Use Tax Act is amended by  
23 changing Sections 1, 3, 3-10, 4, 7, 24, 25, 25a, 25b, and 30

1 and by adding Section 4d as follows:

2 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

3 Sec. 1. For the purpose of this Act, unless otherwise  
4 required by the context:

5 "Use" means the exercise by any person of any right or  
6 power over cigarettes incident to the ownership or possession  
7 thereof, other than the making of a sale thereof in the course  
8 of engaging in a business of selling cigarettes and shall  
9 include the keeping or retention of cigarettes for use, except  
10 that "use" does not include the use of cigarettes by a  
11 not-for-profit research institution conducting tests  
12 concerning the health effects of tobacco products, provided the  
13 cigarettes are not offered for resale.

14 "Brand Style" means a variety of cigarettes distinguished  
15 by the tobacco used, tar and nicotine content, flavoring used,  
16 size of the cigarette, filtration on the cigarette or  
17 packaging.

18 "Cigarette" means any roll for smoking made wholly or in  
19 part of tobacco irrespective of size or shape and whether or  
20 not such tobacco is flavored, adulterated or mixed with any  
21 other ingredient, and the wrapper or cover of which is made of  
22 paper or any other substance or material except tobacco.

23 "Contraband cigarettes" means:

24 (a) cigarettes that do not bear a required tax stamp  
25 under this Act;

1 (b) cigarettes for which any required federal taxes  
2 have not been paid;

3 (c) cigarettes that bear a counterfeit tax stamp;

4 (d) cigarettes that are manufactured, fabricated,  
5 assembled, processed, packaged, or labeled by any person  
6 other than (i) the owner of the trademark rights in the  
7 cigarette brand or (ii) a person that is directly or  
8 indirectly authorized by such owner;

9 (e) cigarettes imported into the United States, or  
10 otherwise distributed, in violation of the federal  
11 Imported Cigarette Compliance Act of 2000 (Title IV of  
12 Public Law 106-476); ~~or~~

13 (f) cigarettes that have false manufacturing labels; ~~or~~

14 (g) cigarettes identified in Section 3-10(a)(1) of  
15 this Act; or

16 (h) cigarettes that are improperly tax stamped,  
17 including cigarettes that bear a tax stamp of another state  
18 or taxing jurisdiction.

19 "Person" means any natural individual, firm, partnership,  
20 association, joint stock company, joint adventure, public or  
21 private corporation, however formed, limited liability  
22 company, or a receiver, executor, administrator, trustee,  
23 guardian or other representative appointed by order of any  
24 court.

25 "Department" means the Department of Revenue.

26 "Sale" means any transfer, exchange or barter in any manner

1 or by any means whatsoever for a consideration, and includes  
2 and means all sales made by any person.

3 "Original Package" means the individual packet, box or  
4 other container whatsoever used to contain and to convey  
5 cigarettes to the consumer.

6 "Distributor" means any and each of the following:

7 a. Any person engaged in the business of selling  
8 cigarettes in this State who brings or causes to be brought  
9 into this State from without this State any original  
10 packages of cigarettes, on which original packages there is  
11 no authorized evidence underneath a sealed transparent  
12 wrapper showing that the tax liability imposed by this Act  
13 has been paid or assumed by the out-of-State seller of such  
14 cigarettes, for sale in the course of such business.

15 b. Any person who makes, manufactures or fabricates  
16 cigarettes in this State for sale, except a person who  
17 makes, manufactures or fabricates cigarettes for sale to  
18 residents incarcerated in penal institutions or resident  
19 patients or a State-operated mental health facility.

20 c. Any person who makes, manufactures or fabricates  
21 cigarettes outside this State, which cigarettes are placed  
22 in original packages contained in sealed transparent  
23 wrappers, for delivery or shipment into this State, and who  
24 elects to qualify and is accepted by the Department as a  
25 distributor under Section 7 of this Act.

26 "Distributor" does not include any person who transfers

1 cigarettes to a not-for-profit research institution that  
2 conducts tests concerning the health effects of tobacco  
3 products and who does not offer the cigarettes for resale.

4 "Distributor maintaining a place of business in this  
5 State", or any like term, means any distributor having or  
6 maintaining within this State, directly or by a subsidiary, an  
7 office, distribution house, sales house, warehouse or other  
8 place of business, or any agent operating within this State  
9 under the authority of the distributor or its subsidiary,  
10 irrespective of whether such place of business or agent is  
11 located here permanently or temporarily, or whether such  
12 distributor or subsidiary is licensed to transact business  
13 within this State.

14 "Business" means any trade, occupation, activity or  
15 enterprise engaged in or conducted in this State for the  
16 purpose of selling cigarettes.

17 "Prior Continuous Compliance Taxpayer" means any person  
18 who is licensed under this Act and who, having been a licensee  
19 for a continuous period of 5 years, is determined by the  
20 Department not to have been either delinquent or deficient in  
21 the payment of tax liability during that period or otherwise in  
22 violation of this Act. Also, any taxpayer who has, as verified  
23 by the Department, continuously complied with the condition of  
24 his bond or other security under provisions of this Act of a  
25 period of 5 consecutive years shall be considered to be a  
26 "prior continuous compliance taxpayer". In calculating the

1 consecutive period of time described herein for qualification  
2 as a "prior continuous compliance taxpayer", a consecutive  
3 period of time of qualifying compliance immediately prior to  
4 the effective date of this amendatory Act of 1987 shall be  
5 credited to any licensee who became licensed on or before the  
6 effective date of this amendatory Act of 1987.

7 "Stamp" or "stamps" mean the indicia required to be affixed  
8 on a pack of cigarettes that evidence payment of the tax on  
9 cigarettes under Section 2 of this Act ~~(35 ILCS 130/2), or the~~  
10 ~~indicia used to indicate that the cigarettes are intended for a~~  
11 ~~sale or distribution within this State that is exempt from~~  
12 ~~State tax under any applicable provision of law.~~

13 ~~"Within this State" means within the exterior limits of the~~  
14 ~~State of Illinois and includes all territory within these~~  
15 ~~limits owned by or ceded to the United States of America.~~

16 "Related party" means any person that is associated with  
17 any other person because he or she:

18 (a) is an officer or director of a business; or

19 (b) is legally recognized as a partner in business. †

20 ~~or~~

21 ~~(c) is directly or indirectly controlled by another.~~

22 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

23 (35 ILCS 135/3) (from Ch. 120, par. 453.33)

24 Sec. 3. Stamp payment. The tax hereby imposed shall be  
25 collected by a distributor maintaining a place of business in

1 this State or a distributor authorized by the Department  
2 pursuant to Section 7 hereof to collect the tax, and the amount  
3 of the tax shall be added to the price of the cigarettes sold  
4 by such distributor. Collection of the tax shall be evidenced  
5 by a stamp or stamps affixed to each original package of  
6 cigarettes or by an authorized substitute for such stamp  
7 imprinted on each original package of such cigarettes  
8 underneath the sealed transparent outside wrapper of such  
9 original package, except as hereinafter provided. Each  
10 distributor who is required or authorized to collect the tax  
11 herein imposed, before delivering or causing to be delivered  
12 any original packages of cigarettes in this State to any  
13 purchaser, shall firmly affix a proper stamp or stamps to each  
14 such package, or (in the case of manufacturers of cigarettes in  
15 original packages which are contained inside a sealed  
16 transparent wrapper) shall imprint the required language on the  
17 original package of cigarettes beneath such outside wrapper as  
18 hereinafter provided. Such stamp or stamps need not be affixed  
19 to the original package of any cigarettes with respect to which  
20 the distributor is required to affix a like stamp or stamps by  
21 virtue of the Cigarette Tax Act, however, and no tax imprint  
22 need be placed underneath the sealed transparent wrapper of an  
23 original package of cigarettes with respect to which the  
24 distributor is required or authorized to employ a like tax  
25 imprint by virtue of the Cigarette Tax Act.

26 No stamp or imprint may be affixed to, or made upon, any

1 package of cigarettes unless that package complies with all  
2 requirements of the federal Cigarette Labeling and Advertising  
3 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
4 warnings, or any other information upon a package of cigarettes  
5 that is sold within the United States. Under the authority of  
6 Section 6, the Department shall revoke the license of any  
7 distributor that is determined to have violated this paragraph.  
8 A person may not affix a stamp on a package of cigarettes,  
9 cigarette papers, wrappers, or tubes if that individual package  
10 has been marked for export outside the United States with a  
11 label or notice in compliance with Section 290.185 of Title 27  
12 of the Code of Federal Regulations. It is not a defense to a  
13 proceeding for violation of this paragraph that the label or  
14 notice has been removed, mutilated, obliterated, or altered in  
15 any manner.

16 Only distributors licensed under this Act and  
17 transporters, as defined in Section 9c of the Cigarette Tax  
18 Act, may possess unstamped original packages of cigarettes.  
19 Prior to shipment to an Illinois retailer, a stamp shall be  
20 applied to each original package of cigarettes sold to the  
21 retailer. A distributor may apply a tax stamp only to an  
22 original package of cigarettes purchased or obtained directly  
23 from an in-state maker, manufacturer, or fabricator licensed as  
24 a distributor under Section 4 of this Act or an out-of-state  
25 maker, manufacturer, or fabricator holding a permit under  
26 Section 7 of this Act. A licensed distributor may ship or

1 otherwise cause to be delivered unstamped original packages of  
2 cigarettes in, into, or from this State. A licensed distributor  
3 may transport unstamped original packages of cigarettes to a  
4 facility, wherever located, owned or controlled by such  
5 distributor; however, a distributor may not transport  
6 unstamped original packages of cigarettes to a facility where  
7 retail sales of cigarettes take place. Any licensed distributor  
8 that ships or otherwise causes to be delivered unstamped  
9 original packages of cigarettes into, within, or from this  
10 State shall ensure that the invoice or equivalent documentation  
11 and the bill of lading or freight bill for the shipment  
12 identifies the true name and address of the consignor or  
13 seller, the true name and address of the consignee or  
14 purchaser, and the quantity by brand style of the cigarettes so  
15 transported, provided that this Section shall not be construed  
16 as to impose any requirement or liability upon any common or  
17 contract carrier.

18 Stamps, when required hereunder, shall be purchased from  
19 the Department, or any person authorized by the Department, by  
20 distributors. On and after July 1, 2003, payment for such  
21 stamps must be made by means of electronic funds transfer. The  
22 Department may refuse to sell stamps to any person who does not  
23 comply with the provisions of this Act. Beginning on June 6,  
24 2002 and through June 30, 2002, persons holding valid licenses  
25 as distributors may purchase cigarette tax stamps up to an  
26 amount equal to 115% of the distributor's average monthly

1 cigarette tax stamp purchases over the 12 calendar months prior  
2 to June 6, 2002.

3 Prior to December 1, 1985, the Department shall allow a  
4 distributor 21 days in which to make final payment of the  
5 amount to be paid for such stamps, by allowing the distributor  
6 to make payment for the stamps at the time of purchasing them  
7 with a draft which shall be in such form as the Department  
8 prescribes, and which shall be payable within 21 days  
9 thereafter: Provided that such distributor has filed with the  
10 Department, and has received the Department's approval of, a  
11 bond, which is in addition to the bond required under Section 4  
12 of this Act, payable to the Department in an amount equal to  
13 80% of such distributor's average monthly tax liability to the  
14 Department under this Act during the preceding calendar year or  
15 \$500,000, whichever is less. The bond shall be joint and  
16 several and shall be in the form of a surety company bond in  
17 such form as the Department prescribes, or it may be in the  
18 form of a bank certificate of deposit or bank letter of credit.  
19 The bond shall be conditioned upon the distributor's payment of  
20 the amount of any 21-day draft which the Department accepts  
21 from that distributor for the delivery of stamps to that  
22 distributor under this Act. The distributor's failure to pay  
23 any such draft, when due, shall also make such distributor  
24 automatically liable to the Department for a penalty equal to  
25 25% of the amount of such draft.

26 On and after December 1, 1985 and until July 1, 2003, the

1 Department shall allow a distributor 30 days in which to make  
2 final payment of the amount to be paid for such stamps, by  
3 allowing the distributor to make payment for the stamps at the  
4 time of purchasing them with a draft which shall be in such  
5 form as the Department prescribes, and which shall be payable  
6 within 30 days thereafter, and beginning on January 1, 2003 and  
7 thereafter, the draft shall be payable by means of electronic  
8 funds transfer: Provided that such distributor has filed with  
9 the Department, and has received the Department's approval of,  
10 a bond, which is in addition to the bond required under Section  
11 4 of this Act, payable to the Department in an amount equal to  
12 150% of such distributor's average monthly tax liability to the  
13 Department under this Act during the preceding calendar year or  
14 \$750,000, whichever is less, except that as to bonds filed on  
15 or after January 1, 1987, such additional bond shall be in an  
16 amount equal to 100% of such distributor's average monthly tax  
17 liability under this Act during the preceding calendar year or  
18 \$750,000, whichever is less. The bond shall be joint and  
19 several and shall be in the form of a surety company bond in  
20 such form as the Department prescribes, or it may be in the  
21 form of a bank certificate of deposit or bank letter of credit.  
22 The bond shall be conditioned upon the distributor's payment of  
23 the amount of any 30-day draft which the Department accepts  
24 from that distributor for the delivery of stamps to that  
25 distributor under this Act. The distributor's failure to pay  
26 any such draft, when due, shall also make such distributor

1 automatically liable to the Department for a penalty equal to  
2 25% of the amount of such draft.

3 Every prior continuous compliance taxpayer shall be exempt  
4 from all requirements under this Section concerning the  
5 furnishing of such bond, as defined in this Section, as a  
6 condition precedent to his being authorized to engage in the  
7 business licensed under this Act. This exemption shall continue  
8 for each such taxpayer until such time as he may be determined  
9 by the Department to be delinquent in the filing of any  
10 returns, or is determined by the Department (either through the  
11 Department's issuance of a final assessment which has become  
12 final under the Act, or by the taxpayer's filing of a return  
13 which admits tax to be due that is not paid) to be delinquent  
14 or deficient in the paying of any tax under this Act, at which  
15 time that taxpayer shall become subject to the bond  
16 requirements of this Section and, as a condition of being  
17 allowed to continue to engage in the business licensed under  
18 this Act, shall be required to furnish bond to the Department  
19 in such form as provided in this Section. Such taxpayer shall  
20 furnish such bond for a period of 2 years, after which, if the  
21 taxpayer has not been delinquent in the filing of any returns,  
22 or delinquent or deficient in the paying of any tax under this  
23 Act, the Department may reinstate such person as a prior  
24 continuance compliance taxpayer. Any taxpayer who fails to pay  
25 an admitted or established liability under this Act may also be  
26 required to post bond or other acceptable security with the

1 Department guaranteeing the payment of such admitted or  
2 established liability.

3 Any person aggrieved by any decision of the Department  
4 under this Section may, within the time allowed by law, protest  
5 and request a hearing, whereupon the Department shall give  
6 notice and shall hold a hearing in conformity with the  
7 provisions of this Act and then issue its final administrative  
8 decision in the matter to such person. In the absence of such a  
9 protest filed within the time allowed by law, the Department's  
10 decision shall become final without any further determination  
11 being made or notice given.

12 The Department shall discharge any surety and shall release  
13 and return any bond or security deposited, assigned, pledged,  
14 or otherwise provided to it by a taxpayer under this Section  
15 within 30 days after:

16 (1) such Taxpayer becomes a prior continuous  
17 compliance taxpayer; or

18 (2) such taxpayer has ceased to collect receipts on  
19 which he is required to remit tax to the Department, has  
20 filed a final tax return, and has paid to the Department an  
21 amount sufficient to discharge his remaining tax liability  
22 as determined by the Department under this Act. The  
23 Department shall make a final determination of the  
24 taxpayer's outstanding tax liability as expeditiously as  
25 possible after his final tax return has been filed. If the  
26 Department cannot make such final determination within 45

1           days after receiving the final tax return, within such  
2           period it shall so notify the taxpayer, stating its reasons  
3           therefor.

4           At the time of purchasing such stamps from the Department  
5           when purchase is required by this Act, or at the time when the  
6           tax which he has collected is remitted by a distributor to the  
7           Department without the purchase of stamps from the Department  
8           when that method of remitting the tax that has been collected  
9           is required or authorized by this Act, the distributor shall be  
10          allowed a discount during any year commencing July 1 and ending  
11          the following June 30 in accordance with the schedule set out  
12          hereinbelow, from the amount to be paid by him to the  
13          Department for such stamps, or to be paid by him to the  
14          Department on the basis of monthly remittances (as the case may  
15          be), to cover the cost, to such distributor, of collecting the  
16          tax herein imposed by affixing such stamps to the original  
17          packages of cigarettes sold by such distributor or by placing  
18          tax imprints underneath the sealed transparent wrapper of  
19          original packages of cigarettes sold by such distributor (as  
20          the case may be): (1) Prior to December 1, 1985, a discount  
21          equal to 1-2/3% of the amount of the tax up to and including  
22          the first \$700,000 paid hereunder by such distributor to the  
23          Department during any such year; 1-1/3% of the next \$700,000 of  
24          tax or any part thereof, paid hereunder by such distributor to  
25          the Department during any such year; 1% of the next \$700,000 of  
26          tax, or any part thereof, paid hereunder by such distributor to

1 the Department during any such year; and 2/3 of 1% of the  
2 amount of any additional tax paid hereunder by such distributor  
3 to the Department during any such year or (2) On and after  
4 December 1, 1985, a discount equal to 1.75% of the amount of  
5 the tax payable under this Act up to and including the first  
6 \$3,000,000 paid hereunder by such distributor to the Department  
7 during any such year and 1.5% of the amount of any additional  
8 tax paid hereunder by such distributor to the Department during  
9 any such year.

10 Two or more distributors that use a common means of  
11 affixing revenue tax stamps or that are owned or controlled by  
12 the same interests shall be treated as a single distributor for  
13 the purpose of computing the discount.

14 Cigarette manufacturers who are distributors under Section  
15 7(a) of this Act, and who place their cigarettes in original  
16 packages which are contained inside a sealed transparent  
17 wrapper, shall be required to remit the tax which they are  
18 required to collect under this Act to the Department by  
19 remitting the amount thereof to the Department by the 5th day  
20 of each month, covering cigarettes shipped or otherwise  
21 delivered to points in Illinois to purchasers during the  
22 preceding calendar month, but a distributor need not remit to  
23 the Department the tax so collected by him from purchasers  
24 under this Act to the extent to which such distributor is  
25 required to remit the tax imposed by the Cigarette Tax Act to  
26 the Department with respect to the same cigarettes. All taxes

1 upon cigarettes under this Act are a direct tax upon the retail  
2 consumer and shall conclusively be presumed to be precollected  
3 for the purpose of convenience and facility only. Cigarette  
4 manufacturers that are distributors licensed under Section  
5 7(a) of this Act and ~~Distributors~~ who place their ~~are~~  
6 ~~manufacturers~~ of cigarettes in original packages which are  
7 contained inside a sealed transparent wrapper, before  
8 delivering such cigarettes or causing such cigarettes to be  
9 delivered in this State to purchasers, shall evidence their  
10 obligation to collect and remit the tax due with respect to  
11 such cigarettes by imprinting language to be prescribed by the  
12 Department on each original package of such cigarettes  
13 underneath the sealed transparent outside wrapper of such  
14 original package, in such place thereon and in such manner as  
15 the Department may prescribe; provided (as stated  
16 hereinbefore) that this requirement does not apply when such  
17 distributor is required or authorized by the Cigarette Tax Act  
18 to place the tax imprint provided for in the last paragraph of  
19 Section 3 of that Act underneath the sealed transparent wrapper  
20 of such original package of cigarettes. Such imprinted language  
21 shall acknowledge the manufacturer's collection and payment of  
22 or liability for the tax imposed by this Act with respect to  
23 such cigarettes.

24 The Department shall adopt the design or designs of the tax  
25 stamps and shall procure the printing of such stamps in such  
26 amounts and denominations as it deems necessary to provide for

1 the affixation of the proper amount of tax stamps to each  
2 original package of cigarettes.

3 Where tax stamps are required, the Department may authorize  
4 distributors to affix revenue tax stamps by imprinting tax  
5 meter stamps upon original packages of cigarettes. The  
6 Department shall adopt rules and regulations relating to the  
7 imprinting of such tax meter stamps as will result in payment  
8 of the proper taxes as herein imposed. No distributor may affix  
9 revenue tax stamps to original packages of cigarettes by  
10 imprinting meter stamps thereon unless such distributor has  
11 first obtained permission from the Department to employ this  
12 method of affixation. The Department shall regulate the use of  
13 tax meters and may, to assure the proper collection of the  
14 taxes imposed by this Act, revoke or suspend the privilege,  
15 theretofore granted by the Department to any distributor, to  
16 imprint tax meter stamps upon original packages of cigarettes.

17 The tax hereby imposed and not paid pursuant to this  
18 Section shall be paid to the Department directly by any person  
19 using such cigarettes within this State, pursuant to Section 12  
20 hereof.

21 A distributor shall not affix, or cause to be affixed, any  
22 stamp or imprint to a package of cigarettes, as provided for in  
23 this Section, if the tobacco product manufacturer, as defined  
24 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
25 that made or sold the cigarettes has failed to become a  
26 participating manufacturer, as defined in subdivision (a)(1)

1 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
2 or has failed to create a qualified escrow fund for any  
3 cigarettes manufactured by the tobacco product manufacturer  
4 and sold in this State or otherwise failed to bring itself into  
5 compliance with subdivision (a) (2) of Section 15 of the Tobacco  
6 Product Manufacturers' Escrow Act.

7 (Source: P.A. 92-322, eff. 1-1-02; 92-536, eff. 6-6-02; 92-737,  
8 eff. 7-25-02; 93-22, eff. 6-20-03.)

9 (35 ILCS 135/3-10)

10 Sec. 3-10. Cigarette enforcement.

11 (a) Prohibitions. It is unlawful for any person:

12 (1) to sell or distribute in this State; to acquire,  
13 hold, own, possess, or transport, for sale or distribution  
14 in this State; or to import, or cause to be imported into  
15 this State for sale or distribution in this State:

16 (A) any cigarettes the package of which:

17 (i) bears any statement, label, stamp,  
18 sticker, or notice indicating that the  
19 manufacturer did not intend the cigarettes to be  
20 sold, distributed, or used in the United States,  
21 including but not limited to labels stating "For  
22 Export Only", "U.S. Tax Exempt", "For Use Outside  
23 U.S.", or similar wording; or

24 (ii) does not comply with:

25 (aa) all requirements imposed by or

1           pursuant to federal law regarding warnings and  
2           other information on packages of cigarettes  
3           manufactured, packaged, or imported for sale,  
4           distribution, or use in the United States,  
5           including but not limited to the precise  
6           warning labels specified in the federal  
7           Cigarette Labeling and Advertising Act, 15  
8           U.S.C. 1333; and

9                   (bb) all federal trademark and copyright  
10           laws;

11           (B) any cigarettes imported into the United States  
12           in violation of 26 U.S.C. 5754 or any other federal  
13           law, or implementing federal regulations;

14           (C) any cigarettes that such person otherwise  
15           knows or has reason to know the manufacturer did not  
16           intend to be sold, distributed, or used in the United  
17           States; or

18           (D) any cigarettes for which there has not been  
19           submitted to the Secretary of the U.S. Department of  
20           Health and Human Services the list or lists of the  
21           ingredients added to tobacco in the manufacture of the  
22           cigarettes required by the federal Cigarette Labeling  
23           and Advertising Act, 15 U.S.C. 1335a;

24           (2) to alter the package of any cigarettes, prior to  
25           sale or distribution to the ultimate consumer, so as to  
26           remove, conceal, or obscure:

1 (A) any statement, label, stamp, sticker, or  
2 notice described in subdivision (a)(1)(A)(i) of this  
3 Section;

4 (B) any health warning that is not specified in, or  
5 does not conform with the requirements of, the federal  
6 Cigarette Labeling and Advertising Act, 15 U.S.C.  
7 1333; or

8 (3) to affix any stamp required pursuant to this Act to  
9 the package of any cigarettes described in subdivision  
10 (a)(1) of this Section or altered in violation of  
11 subdivision (a)(2) ~~or~~

12 ~~(4) to knowingly possess, or possess for sale,~~  
13 ~~contraband cigarettes.~~

14 (b) Documentation. On the first business day of each month,  
15 each person licensed to affix the State tax stamp to cigarettes  
16 shall file with the Department, for all cigarettes imported  
17 into the United States to which the person has affixed the tax  
18 stamp in the preceding month:

19 (1) a copy of:

20 (A) the permit issued pursuant to the Internal  
21 Revenue Code, 26 U.S.C. 5713, to the person importing  
22 the cigarettes into the United States allowing the  
23 person to import the cigarettes; and

24 (B) the customs form containing, with respect to  
25 the cigarettes, the internal revenue tax information  
26 required by the U.S. Bureau of Alcohol, Tobacco and

1           Firearms;

2           (2) a statement, signed by the person under penalty of  
3           perjury, which shall be treated as confidential by the  
4           Department and exempt from disclosure under the Freedom of  
5           Information Act, identifying the brand and brand styles of  
6           all such cigarettes, the quantity of each brand style of  
7           such cigarettes, the supplier of such cigarettes, and the  
8           person or persons, if any, to whom such cigarettes have  
9           been conveyed for resale; and a separate statement, signed  
10          by the individual under penalty of perjury, which shall not  
11          be treated as confidential or exempt from disclosure,  
12          separately identifying the brands and brand styles of such  
13          cigarettes; and

14          (3) a statement, signed by an officer of the  
15          manufacturer or importer under penalty of perjury,  
16          certifying that the manufacturer or importer has complied  
17          with:

18                 (A) the package health warning and ingredient  
19                 reporting requirements of the federal Cigarette  
20                 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,  
21                 with respect to such cigarettes; and

22                 (B) the provisions of Exhibit T of the Master  
23                 Settlement Agreement entered in the case of People of  
24                 the State of Illinois v. Philip Morris, et al. (Circuit  
25                 Court of Cook County, No. 96-L13146), including a  
26                 statement indicating whether the manufacturer is, or

1 is not, a participating tobacco manufacturer within  
2 the meaning of Exhibit T.

3 (c) Administrative sanctions.

4 (1) Upon finding that a distributor or a person has  
5 committed any of the acts prohibited by subsection (a),  
6 knowing or having reason to know that he or she has done  
7 so, or has failed to comply with any requirement of  
8 subsection (b), the Department may revoke or suspend the  
9 license or licenses of any distributor pursuant to the  
10 procedures set forth in Section 6 and impose on the  
11 distributor, or on the person, a civil penalty in an amount  
12 not to exceed the greater of 500% of the retail value of  
13 the cigarettes involved or \$5,000.

14 (2) Cigarettes that are acquired, held, owned,  
15 possessed, transported in, imported into, or sold or  
16 distributed in this State in violation of this Section  
17 shall be deemed contraband under this Act and are subject  
18 to seizure and forfeiture as provided in this Act, and all  
19 such cigarettes seized and forfeited shall be destroyed or  
20 maintained and used in an undercover capacity. Such  
21 cigarettes shall be deemed contraband whether the  
22 violation of this Section is knowing or otherwise.

23 (d) Unfair trade practices. In addition to any other  
24 penalties provided for in this Act, a violation of subsection  
25 (a) or subsection (b) of this Section shall constitute an  
26 unlawful practice as provided in the Consumer Fraud and

1 Deceptive Business Practices Act.

2 (d-1) Retailers shall not be liable under subsections  
3 (c)(1) and (d) of this Section for unknowingly possessing,  
4 selling, or distributing to consumers or users cigarettes  
5 identified in subsection (a)(1) of this Section if the  
6 cigarettes possessed, sold, or distributed by the retailer were  
7 obtained from a distributor licensed under this Act or the  
8 Cigarette Tax Act.

9 (e) Unfair cigarette sales. For purposes of the Trademark  
10 Registration and Protection Act and the Counterfeit Trademark  
11 Act, cigarettes imported or reimported into the United States  
12 for sale or distribution under any trade name, trade dress, or  
13 trademark that is the same as, or is confusingly similar to,  
14 any trade name, trade dress, or trademark used for cigarettes  
15 manufactured in the United States for sale or distribution in  
16 the United States shall be presumed to have been purchased  
17 outside of the ordinary channels of trade.

18 (f) General provisions.

19 (1) This Section shall be enforced by the Department;  
20 provided that, at the request of the Director of Revenue or  
21 the Director's duly authorized agent, the State police and  
22 all local police authorities shall enforce the provisions  
23 of this Section. The Attorney General has concurrent power  
24 with the State's Attorney of any county to enforce this  
25 Section.

26 (2) For the purpose of enforcing this Section, the

1 Director of Revenue and any agency to which the Director  
2 has delegated enforcement responsibility pursuant to  
3 subdivision (f)(1) may request information from any State  
4 or local agency and may share information with and request  
5 information from any federal agency and any agency of any  
6 other state or any local agency of any other state.

7 (3) In addition to any other remedy provided by law,  
8 including enforcement as provided in subdivision (a)(1),  
9 any person may bring an action for appropriate injunctive  
10 or other equitable relief for a violation of this Section;  
11 actual damages, if any, sustained by reason of the  
12 violation; and, as determined by the court, interest on the  
13 damages from the date of the complaint, taxable costs, and  
14 reasonable attorney's fees. If the trier of fact finds that  
15 the violation is flagrant, it may increase recovery to an  
16 amount not in excess of 3 times the actual damages  
17 sustained by reason of the violation.

18 (g) Definitions. As used in this Section:

19 "Importer" means that term as defined in 26 U.S.C. 5702(1).

20 "Package" means that term as defined in 15 U.S.C. 1332(4).

21 (h) Applicability.

22 (1) This Section does not apply to:

23 (A) cigarettes allowed to be imported or brought  
24 into the United States for personal use; and

25 (B) cigarettes sold or intended to be sold as  
26 duty-free merchandise by a duty-free sales enterprise

1           in accordance with the provisions of 19 U.S.C. 1555(b)  
2           and any implementing regulations; except that this  
3           Section shall apply to any such cigarettes that are  
4           brought back into the customs territory for resale  
5           within the customs territory.

6           (2) The penalties provided in this Section are in  
7           addition to any other penalties imposed under other  
8           provision of law.

9           (Source: P.A. 95-1053, eff. 1-1-10.)

10           (35 ILCS 135/4) (from Ch. 120, par. 453.34)

11           Sec. 4. Distributor's license. A distributor maintaining a  
12           place of business in this State, if required to procure a  
13           license or allowed to obtain a permit as a distributor under  
14           the Cigarette Tax Act, need not obtain an additional license or  
15           permit under this Act, but shall be deemed to be sufficiently  
16           licensed or registered by virtue of his being licensed or  
17           registered under the Cigarette Tax Act.

18           Every distributor maintaining a place of business in this  
19           State, if not required to procure a license or allowed to  
20           obtain a permit as a distributor under the Cigarette Tax Act,  
21           shall make a verified application to the Department (upon a  
22           form prescribed and furnished by the Department) for a license  
23           to act as a distributor under this Act. In completing such  
24           application, the applicant shall furnish such information as  
25           the Department may reasonably require.

1           The annual license fee payable to the Department for each  
2 distributor's license shall be \$250. The purpose of such annual  
3 license fee is to defray the cost, to the Department, of  
4 serializing cigarette tax stamps. The applicant for license  
5 shall pay such fee to the Department at the time of submitting  
6 the application for license to the Department.

7           Such applicant shall file, with his application, a joint  
8 and several bond. Such bond shall be executed to the Department  
9 of Revenue, with good and sufficient surety or sureties  
10 residing or licensed to do business within the State of  
11 Illinois, in the amount of \$2,500, conditioned upon the true  
12 and faithful compliance by the licensee with all of the  
13 provisions of this Act. Such bond, or a reissue thereof, or a  
14 substitute therefor, shall be kept in effect during the entire  
15 period covered by the license. A separate application for  
16 license shall be made, a separate annual license fee paid, and  
17 a separate bond filed, for each place of business at or from  
18 which the applicant proposes to act as a distributor under this  
19 Act and for which the applicant is not required to procure a  
20 license or allowed to obtain a permit as a distributor under  
21 the Cigarette Tax Act.

22           The following are ineligible to receive a distributor's  
23 license under this Act:

24           (1) a person who is not of good character and  
25 reputation in the community in which he resides;

26           (2) a person who has been convicted of a felony under

1 any Federal or State law, if the Department, after  
2 investigation and a hearing, if requested by the applicant,  
3 determines that such person has not been sufficiently  
4 rehabilitated to warrant the public trust;

5 (3) a corporation, if any officer, manager or director  
6 thereof, or any stockholder or stockholders owning in the  
7 aggregate more than 5% of the stock of such corporation,  
8 would not be eligible to receive a license hereunder for  
9 any reason;~~;~~

10 (4) a person, or any person who owns more than 15  
11 percent of the ownership interests in a person or a related  
12 party who:

13 (a) owes, at the time of application, any \$500 or  
14 ~~more in~~ delinquent cigarette taxes that have been  
15 determined by law to be due and unpaid, unless the  
16 license applicant has entered into an agreement  
17 approved by the Department to pay the amount due;

18 (b) had a license under this Act revoked within the  
19 past 2 years by the Department for ~~willful~~ misconduct  
20 relating to stolen or contraband cigarettes or has been  
21 convicted of a State or federal crime, punishable by  
22 imprisonment of one year or more, relating to stolen or  
23 contraband cigarettes;

24 (c) ~~is a distributor who~~ manufactures cigarettes,  
25 whether in this State or out of this State, and who is  
26 neither (i) a participating manufacturer as defined in

1 subsection II(jj) of the "Master Settlement Agreement"  
2 as defined in Sections 10 of the Tobacco Products  
3 Manufacturers' Escrow Act and the Tobacco Products  
4 Manufacturers' Escrow Enforcement Act of 2003 (30 ILCS  
5 168/10 and 30 ILCS 167/10); nor (ii) in full compliance  
6 with Tobacco Products Manufacturers' Escrow Act and  
7 the Tobacco Products Manufacturers' Escrow Enforcement  
8 Act of 2003 (30 ILCS 168/ and 30 ILCS 167/);

9 (d) has been found by the Department, after notice  
10 and a hearing, to have ~~willfully~~ imported or caused to  
11 be imported into the United States for sale or  
12 distribution any cigarette in violation of 19 U.S.C.  
13 1681a;

14 (e) has been found by the Department, after notice  
15 and a hearing, to have ~~willfully~~ imported or caused to  
16 be imported into the United States for sale or  
17 distribution or manufactured for sale or distribution  
18 in the United States any cigarette that does not fully  
19 comply with the Federal Cigarette Labeling and  
20 Advertising Act (15 U.S.C. 1331, et seq.); or

21 (f) has been found by the Department, after notice  
22 and a hearing, to have ~~willfully~~ made a material false  
23 statement in the application or has ~~willfully~~ failed to  
24 produce records required to be maintained by this Act.

25 Upon approval of such application and bond and payment of  
26 the required annual license fee, the Department shall issue a

1 license to the applicant. Such license shall permit the  
2 applicant to engage in business as a distributor at or from the  
3 place shown in his application. All licenses issued by the  
4 Department under this Act shall be valid for not to exceed one  
5 year after issuance unless sooner revoked, canceled or  
6 suspended as in this Act provided. No license issued under this  
7 Act is transferable or assignable. Such license shall be  
8 conspicuously displayed at the place of business for which it  
9 is issued.

10 No distributor licensee acquires any vested interest or  
11 compensable property right in a license issued under this Act.

12 A licensed distributor shall notify the Department of any  
13 change in the information contained on the application form,  
14 including any change in ownership, and shall do so within 30  
15 days after any such change.

16 Any person aggrieved by any decision of the Department  
17 under this Section may, within 20 days after notice of the  
18 decision, protest and request a hearing. Upon receiving a  
19 request for a hearing, the Department shall give notice to the  
20 person requesting the hearing of the time and place fixed for  
21 the hearing and shall hold a hearing in conformity with the  
22 provisions of this Act and then issue its final administrative  
23 decision in the matter to that person. In the absence of a  
24 protest and request for a hearing within 20 days, the  
25 Department's decision shall become final without any further  
26 determination being made or notice given.

1 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

2 (35 ILCS 135/4d new)

3 Sec. 4d. Sales of cigarettes to and by retailers. In-state  
4 makers, manufacturers, or fabricators licensed as distributors  
5 under Section 4 of this Act and out-of-state makers,  
6 manufacturers, or fabricators holding permits under Section 7  
7 of this Act may not sell original packages of cigarettes to  
8 retailers. A retailer may sell only original packages of  
9 cigarettes obtained from licensed distributors other than  
10 in-state makers, manufacturers, or fabricators licensed as  
11 distributors under Section 4 of this Act and out-of-state  
12 makers, manufacturers, or fabricators holding permits under  
13 Section 7 of this Act.

14 (35 ILCS 135/7) (from Ch. 120, par. 453.37)

15 Sec. 7. Distributor's permits.

16 (a) The Department may, in its discretion, upon  
17 application, issue permits authorizing the collection of the  
18 tax herein imposed by those out-of-State cigarette  
19 manufacturers who are not required to be licensed as  
20 distributors of cigarettes in this State, but who elect to  
21 qualify under this Act as distributors of cigarettes in this  
22 State, and who, to the satisfaction of the Department, furnish  
23 adequate security to insure collection and payment of the tax,  
24 provided that any such permit shall extend only to cigarettes

1 which such permittee manufacturer places in original packages  
2 that are contained inside a sealed transparent wrapper, and  
3 provided that no such permit shall be issued under this Act to  
4 such a manufacturer who has obtained the permit provided for in  
5 Section 4b(a) of the Cigarette Tax Act. Such distributor shall  
6 be issued, without charge, a permit to collect such tax in such  
7 manner, and subject to such reasonable regulations and  
8 agreements as the Department shall prescribe. When so  
9 authorized, it shall be the duty of such distributor to collect  
10 the tax upon all cigarettes which he delivers (or causes to be  
11 delivered) within this State to licensed distributors  
12 ~~purchasers~~, in the same manner and subject to the same  
13 requirements as a distributor maintaining a place of business  
14 within this State. Such permit shall be in such form as the  
15 Department may prescribe and shall not be transferable or  
16 assignable.

17 The following are ineligible to receive a distributor's  
18 permit under this Act:

19 (1) a person who is not of good character and reputation in  
20 the community in which he resides;

21 (2) a person who has been convicted of a felony under any  
22 Federal or State law, if the Department, after investigation  
23 and a hearing, if requested by the applicant, determines that  
24 such person has not been sufficiently rehabilitated to warrant  
25 the public trust;

26 (3) a corporation, if any officer, manager or director

1       thereof, or any stockholder or stockholders owning in the  
2       aggregate more than 5% of the stock of such corporation, would  
3       not be eligible to receive a permit under this Act for any  
4       reason.

5       With respect to cigarettes which come within the scope of  
6       such a permit and which any such permittee delivers or causes  
7       to be delivered in Illinois to licensed distributors  
8       ~~purchasers~~, such permittee shall collect the tax imposed by  
9       this Act and shall remit such tax to the Department by the 5th  
10      day of each month for the preceding calendar month. Each such  
11      remittance shall be accompanied by a return filed with the  
12      Department on a form to be prescribed and furnished by the  
13      Department and shall disclose such information as the  
14      Department may lawfully require. The Department may promulgate  
15      rules to require that the permittee's return be accompanied by  
16      appropriate computer-generated magnetic media supporting  
17      schedule data in the format prescribed by the Department,  
18      unless, as provided by rule, the Department grants an exception  
19      upon petition of the permittee. Each such return shall be  
20      accompanied by a copy of each invoice rendered by the permittee  
21      to any licensed distributor ~~purchaser~~ to whom the permittee  
22      delivered cigarettes of the type covered by the permit (or  
23      caused cigarettes of the type covered by the permit to be  
24      delivered) in Illinois during the period covered by such  
25      return.

26      Such authority and permit may be suspended, canceled or

1     revoked when, at any time, the Department considers that the  
2     security given is inadequate, or that such tax can more  
3     effectively be collected from the person using such cigarettes  
4     in this State or through distributors located in this State, or  
5     whenever the permittee violates any provision of this Act or  
6     any lawful rule or regulation issued by the Department pursuant  
7     to this Act or is determined to be ineligible for a  
8     distributor's permit under this Act as provided in this  
9     Section, or whenever the permittee shall notify the Department  
10    in writing of his desire to have the permit canceled. The  
11    Department shall have the power, in its discretion, to issue a  
12    new permit after such suspension, cancellation or revocation,  
13    except when the person who would receive the permit is  
14    ineligible to receive a distributor's permit under this Act.

15         All permits issued by the Department under this Act shall  
16    be valid for not to exceed one year after issuance unless  
17    sooner revoked, canceled or suspended as in this Act provided.

18         (b) Out-of-state cigarette manufacturers who are not  
19    required to be licensed as distributors of cigarettes in this  
20    State and who do not elect to obtain approval under subsection  
21    (a) to pay the tax imposed by this Act, but who elect to  
22    qualify under this Act as distributors of cigarettes in this  
23    State for purposes of shipping and delivering unstamped  
24    original packages of cigarettes into this State to licensed  
25    distributors, shall obtain a permit from the Department,  
26    provided that no such permit shall be issued under this

1 subsection to a manufacturer who has obtained the permit  
2 provided for in Section 4b(b) of the Cigarette Tax Act. These  
3 permits shall be issued without charge in such form as the  
4 Department may prescribe and shall not be transferable or  
5 assignable.

6 The following are ineligible to receive a distributor's  
7 permit under this subsection:

8 (1) a person who is not of good character and  
9 reputation in the community in which he or she resides;

10 (2) a person who has been convicted of a felony under  
11 any federal or State law, if the Department, after  
12 investigation and a hearing, if requested by the applicant,  
13 determines that the person has not been sufficiently  
14 rehabilitated to warrant the public trust; and

15 (3) a corporation, if any officer, manager or director  
16 thereof, or any stockholder or stockholders owning in the  
17 aggregate more than 5% of the stock of the corporation,  
18 would not be eligible to receive a permit under this Act  
19 for any reason.

20 With respect to original packages of cigarettes such  
21 permittee delivers or causes to be delivered in Illinois and  
22 distributed to the public for promotional purposes without  
23 consideration, the permittee shall pay the tax imposed by this  
24 Act by remitting the amount thereof to the Department by the  
25 5th day of each month covering cigarettes shipped or otherwise  
26 delivered in Illinois for those purposes during the preceding

1 calendar month. The permittee, before delivering those  
2 cigarettes or causing those cigarettes to be delivered in this  
3 State, shall evidence his or her obligation to remit the taxes  
4 due with respect to those cigarettes by imprinting language to  
5 be prescribed by the Department on each original package of  
6 cigarettes, in such place thereon and in such manner also to be  
7 prescribed by the Department. The imprinted language shall  
8 acknowledge the permittee's payment of or liability for the tax  
9 imposed by this Act with respect to the distribution of those  
10 cigarettes.

11 With respect to cigarettes such permittee delivers or  
12 causes to be delivered in Illinois to Illinois licensed  
13 distributors or distributed to the public for promotional  
14 purposes, the permittee shall, by the 5th day of each month,  
15 file with the Department, a report covering cigarettes shipped  
16 or otherwise delivered in Illinois to licensed distributors or  
17 distributed to the public for promotional purposes during the  
18 preceding calendar month on a form to be prescribed and  
19 furnished by the Department and shall disclose such other  
20 information as the Department may lawfully require. The  
21 Department may promulgate rules to require that the permittee's  
22 report be accompanied by appropriate computer-generated  
23 magnetic media supporting schedule data in the format  
24 prescribed by the Department, unless, as provided by rule, the  
25 Department grants an exception upon petition of the permittee.  
26 Each such report shall be accompanied by a copy of each invoice

1 rendered by the permittee to any purchaser to whom the  
2 permittee delivered cigarettes of the type covered by the  
3 permit (or caused cigarettes of the type covered by the permit  
4 to be delivered) in Illinois during the period covered by such  
5 report.

6 Such permit may be suspended, canceled, or revoked whenever  
7 the permittee violates any provision of this Act or any lawful  
8 rule or regulation issued by the Department pursuant to this  
9 Act, is determined to be ineligible for a distributor's permit  
10 under this Act as provided in this Section, or notifies the  
11 Department in writing of his or her desire to have the permit  
12 canceled. The Department shall have the power, in its  
13 discretion, to issue a new permit after such suspension,  
14 cancellation, or revocation, except when the person who would  
15 receive the permit is ineligible to receive a distributor's  
16 permit under this Act.

17 All permits issued by the Department under this Act shall  
18 be valid for not to exceed one year after issuance unless  
19 sooner revoked, canceled, or suspended as in this Act provided.

20 (Source: P.A. 79-387.)

21 (35 ILCS 135/24) (from Ch. 120, par. 453.54)

22 Sec. 24. Any duly authorized employee of the Department may  
23 arrest without warrant any person committing in his presence a  
24 violation of any of the provisions of this Act, and may without  
25 a search warrant seize any original packages of contraband

1 ~~cigarettes not tax stamped or tax imprinted underneath the~~  
2 ~~sealed transparent wrapper of such original packages in~~  
3 ~~accordance with the provisions of this Act~~ and any vending  
4 device in which such packages may be found, and such original  
5 packages or vending devices so seized shall be subject to  
6 confiscation and forfeiture as hereinafter provided.

7 (Source: Laws 1953, p. 265.)

8 (35 ILCS 135/25) (from Ch. 120, par. 453.55)

9 Sec. 25. After seizing any original packages of cigarettes,  
10 or cigarette vending devices, as provided in Section 24 of this  
11 Act, the Department shall hold a hearing and shall determine  
12 whether such original packages of cigarettes, at the time of  
13 their seizure by the Department, were contraband cigarettes ~~not~~  
14 ~~tax stamped or tax imprinted underneath the sealed transparent~~  
15 ~~wrapper of such original packages in accordance with this Act,~~  
16 or whether such cigarette vending devices, at the time of their  
17 seizure by the Department, contained original packages of  
18 contraband cigarettes ~~not tax stamped or tax imprinted~~  
19 ~~underneath the sealed transparent wrapper of such original~~  
20 ~~packages as required by this Act.~~ The Department shall give not  
21 less than 7 days' notice of the time and place of such hearing  
22 to the owner of such property if he is known, and also to the  
23 person in whose possession the property so taken was found, if  
24 such person is known and if such person in possession is not  
25 the owner of said property. In case neither the owner nor the

1 person in possession of such property is known, the Department  
2 shall cause publication of the time and place of such hearing  
3 to be made at least once in each week for 3 weeks successively  
4 in a newspaper of general circulation in the county where such  
5 hearing is to be held.

6 If, as the result of such hearing, the Department shall  
7 determine that the original packages of cigarettes seized were  
8 at the time of seizure contraband cigarettes ~~not tax stamped or~~  
9 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
10 ~~original packages as required by this Act,~~ or that any  
11 cigarette vending device at the time of its seizure contained  
12 original packages of contraband cigarettes ~~not tax stamped or~~  
13 ~~tax imprinted underneath the sealed transparent wrapper of such~~  
14 ~~original packages as required by this Act,~~ the Department shall  
15 enter an order declaring such original packages of cigarettes  
16 or such cigarette vending devices confiscated and forfeited to  
17 the State, and to be held by the Department for disposal by it  
18 as provided in Section 27 of this Act. The Department shall  
19 give notice of such order to the owner of such property if he  
20 is known, and also to the person in whose possession the  
21 property so taken was found, if such person is known and if  
22 such person in possession is not the owner of said property. In  
23 case neither the owner nor the person in possession of such  
24 property is known, the Department shall cause publication of  
25 such order to be made at least once in each week for 3 weeks  
26 successively in a newspaper of general circulation in the

1 county where such hearing was held.

2 (Source: P.A. 76-685.)

3 (35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

4 Sec. 25a. Possession of more than 100 original packages of  
5 contraband cigarettes; penalty. With the exception of licensed  
6 distributors or transporters, as defined in Section 9c of the  
7 Cigarette Tax Act, possessing unstamped original packages of  
8 cigarettes, and licensed distributors possessing original  
9 packages of cigarettes that bear a tax stamp of another state  
10 or taxing jurisdiction, anyone possessing more than 100  
11 packages of contraband cigarettes contained in original  
12 packages is ~~which are not tax stamped as required by this Act,~~  
13 ~~or which are improperly tax stamped, shall be liable to pay, to~~  
14 the Department for deposit into ~~in~~ the Tax Compliance and  
15 Administration Fund ~~State Treasury~~, a penalty of \$25 ~~\$15~~ for  
16 each such package of cigarettes in excess of 100 packages,  
17 unless reasonable cause can be established by the person upon  
18 whom the penalty is imposed. Reasonable cause shall be  
19 determined in each situation in accordance with rules adopted  
20 by the Department. The provisions of the Uniform Penalty and  
21 Interest Act do not apply to this Section. ~~Such penalty may be~~  
22 ~~recovered by the Department in a civil action.~~

23 (Source: P.A. 83-1428.)

24 (35 ILCS 135/25b)

1           Sec. 25b. Possession of not less than 10 and not more than  
2 100 original packages not tax stamped or improperly tax  
3 stamped; penalty. With the exception of licensed distributors  
4 and transporters, as defined in Section 9c of the Cigarette Tax  
5 Act, possessing unstamped packages of cigarettes, and licensed  
6 distributors possessing original packages of cigarettes that  
7 bear a tax stamp of another state or taxing jurisdiction,  
8 anyone possessing not less than 10 and not more than 100  
9 packages of contraband cigarettes contained in original  
10 packages ~~that are not tax stamped as required by this Act, or~~  
11 ~~that are improperly tax stamped,~~ is liable to pay to the  
12 Department, for deposit into the Tax Compliance and  
13 Administration Fund, a penalty of \$20 ~~\$10~~ for each such package  
14 of cigarettes, unless reasonable cause can be established by  
15 the person upon whom the penalty is imposed. Reasonable cause  
16 shall be determined in each situation in accordance with rules  
17 adopted by the Department. Any person who purchases and  
18 possesses a total of 9 or fewer original packages of unstamped  
19 cigarettes per month is exempt from the penalties of this  
20 Section. The provisions of the Uniform Penalty and Interest Act  
21 do not apply to this Section.

22 (Source: P.A. 92-322, eff. 1-1-02.)

23 (35 ILCS 135/30) (from Ch. 120, par. 453.60)

24           Sec. 30. Punishment for sale or possession of unstamped  
25 packages of cigarettes, other than by a licensed distributor or

1 transporter.

2 (a) Possession or sale of more than 9 but less than 101  
3 unstamped packages of cigarettes. With the exception of  
4 licensed distributors or transporters, as defined in Section 9c  
5 of the Cigarette Tax Act, any person who has in his or her  
6 possession or sells more than 9 but less than 101 original  
7 packages of contraband cigarettes is guilty of a Class A  
8 misdemeanor.

9 (b) Possession or sale of more than 100 but less than 251  
10 unstamped packages of cigarettes. With the exception of  
11 licensed distributors or transporters, as defined in Section 9c  
12 of the Cigarette Tax Act, any person who has in his or her  
13 possession or sells more than 100 but less than 251 original  
14 packages of contraband cigarettes is guilty of a Class A  
15 misdemeanor for the first offense and a Class 4 felony for each  
16 subsequent offense.

17 (c) Possession or sale of more than 250 but less than 1,001  
18 unstamped packages of cigarettes. With the exception of  
19 licensed distributors or transporters, as defined in Section 9c  
20 of the Cigarette Tax Act, any person who has in his or her  
21 possession or sells more than 250 but less than 1,001 original  
22 packages of contraband cigarettes is guilty of a Class 4  
23 felony.

24 (d) Possession or sale of more than 1,000 contraband  
25 packages of cigarettes. With the exception of licensed  
26 distributors or transporters, as defined in Section 9c of the

1 Cigarette Tax Act, any person who has in his or her possession  
2 or sells, more than 1,000 original packages of contraband  
3 cigarettes is guilty of a Class 3 felony.

4 (e) Any person licensed as a distributor or transporter, as  
5 defined in Section 9c of the Cigarette Tax Act, who has in his  
6 or her possession or sells 100 or less original packages of  
7 contraband cigarettes is guilty of a Class A misdemeanor.

8 (f) Any person licensed as a distributor or transporter, as  
9 defined in Section 9c of the Cigarette Tax Act, who has in his  
10 or her possession or sells more than 100 original packages of  
11 contraband cigarettes is guilty of a Class 4 felony.

12 (g) Notwithstanding subsections (e) through (f), licensed  
13 distributors and transporters, as defined in Section 9c of the  
14 Cigarette Tax Act, may possess unstamped packages of  
15 cigarettes. Notwithstanding subsections (e) through (f),  
16 licensed distributors may possess cigarettes that bear a tax  
17 stamp of another state or taxing jurisdiction. Notwithstanding  
18 subsections (e) through (f), a licensed distributor may possess  
19 contraband cigarettes returned to the distributor by a retailer  
20 if the distributor immediately conducts an inventory of the  
21 cigarettes being returned, the distributor and the retailer  
22 returning the contraband cigarettes sign the inventory, the  
23 distributor provides a copy of the signed inventory to the  
24 retailer, and the distributor retains the inventory in its  
25 books and records and promptly notifies the Department of  
26 Revenue.

1       (h) Notwithstanding subsections (a) through (d) of this  
2       Section, a retailer unknowingly possessing contraband  
3       cigarettes obtained from a licensed distributor or knowingly  
4       possessing contraband cigarettes obtained from a licensed  
5       distributor is not subject to penalties under this Section if  
6       the retailer, within 48 hours after discovering that the  
7       cigarettes are contraband cigarettes, excluding Saturdays,  
8       Sundays, and holidays: (i) notifies the Department and the  
9       licensed distributor from whom the cigarettes were obtained,  
10       orally and in writing, that he or she possesses contraband  
11       cigarettes obtained from a licensed distributor; (ii) places  
12       the contraband cigarettes in one or more containers and seals  
13       those containers; and (iii) places on the containers the  
14       following or similar language: "Contraband Cigarettes. Not For  
15       Sale." All contraband cigarettes in the possession of a  
16       retailer remain subject to forfeiture under the provisions of  
17       this Act.

18       ~~Any person other than a licensed distributor who sells, offers~~  
19       ~~for sale, or has in his possession with intent to sell or offer~~  
20       ~~for sale, more than 100 original packages, not tax stamped or~~  
21       ~~tax imprinted underneath the sealed transparent wrapper of such~~  
22       ~~original package in accordance with this Act, shall be guilty~~  
23       ~~of a Class 4 felony.~~

24       ~~Any person other than a licensed distributor who sells,~~  
25       ~~offers for sale, or has in his possession with intent to sell~~  
26       ~~or offer for sale, 100 or fewer original packages, not tax~~

1 ~~stamped or tax imprinted underneath the sealed transparent~~  
2 ~~wrapper of the original package in accordance with this Act, is~~  
3 ~~guilty of a Class A misdemeanor for the first offense and a~~  
4 ~~Class 4 felony for each subsequent offense.~~

5 ~~Any distributor who sells an original package of~~  
6 ~~cigarettes, not tax stamped or tax imprinted underneath the~~  
7 ~~sealed transparent wrapper of such original package in~~  
8 ~~accordance with this Act, except when the sale is made under~~  
9 ~~such circumstances that the tax imposed by this Act may not~~  
10 ~~legally be levied because of the Constitution or laws of the~~  
11 ~~United States, shall be guilty of a Class 3 felony.~~

12 (Source: P.A. 92-322, eff. 1-1-02.)

13 (35 ILCS 135/3-15 rep.)

14 Section 20. The Cigarette Use Tax Act is amended by  
15 repealing Section 3-15.

16 Section 25. The Prevention of Cigarette Sales to Minors Act  
17 is amended by changing Sections 2, 5, 6, 7, 8, and 10 and by  
18 adding Section 33 as follows:

19 (720 ILCS 678/2)

20 (This Section may contain text from a Public Act with a  
21 delayed effective date)

22 Sec. 2. Definitions. For the purpose of this Act:

23 "Cigarette", when used in this Act, means any roll for

1 smoking made wholly or in part of tobacco irrespective of size  
2 or shape and whether or not the tobacco is flavored,  
3 adulterated, or mixed with any other ingredient, and the  
4 wrapper or cover of which is made of paper or any other  
5 substance or material except whole leaf tobacco.

6 "Clear and conspicuous statement" means the statement is of  
7 sufficient type size to be clearly readable by the recipient of  
8 the communication.

9 "Consumer" means an individual who acquires or seeks to  
10 acquire cigarettes for personal use.

11 "Delivery sale" means any sale of cigarettes to a consumer  
12 if:

13 (a) the consumer submits the order for such sale by  
14 means of a telephone or other method of voice transmission,  
15 the mails, or the Internet or other online service, or the  
16 seller is otherwise not in the physical presence of the  
17 buyer when the request for purchase or order is made; or

18 (b) the cigarettes are delivered by use of a common  
19 carrier, private delivery service, or the mails, or the  
20 seller is not in the physical presence of the buyer when  
21 the buyer obtains possession of the cigarettes.

22 "Delivery service" means any person (other than a person  
23 that makes a delivery sale) who delivers to the consumer the  
24 cigarettes sold in a delivery sale.

25 "Department" means the Department of Revenue.

26 "Government-issued identification" means a State driver's

1 license, State identification card, passport, a military  
2 identification or an official naturalization or immigration  
3 document, such as an alien registration recipient card  
4 (commonly known as a "green card") or an immigrant visa.

5 ~~"Legal minimum age" means the minimum age at which an~~  
6 ~~individual may legally purchase cigarettes within this State,~~  
7 ~~as determined by either State or local government.~~

8 "Mails" or "mailing" mean the shipment of cigarettes  
9 through the United States Postal Service.

10 "Out-of-state sale" means a sale of cigarettes to a  
11 consumer located outside of this State where the consumer  
12 submits the order for such sale by means of a telephonic or  
13 other method of voice transmission, the mails or any other  
14 delivery service, facsimile transmission, or the Internet or  
15 other online service and where the cigarettes are delivered by  
16 use of the mails or other delivery service.

17 "Person" means any individual, corporation, partnership,  
18 limited liability company, association, or other organization  
19 that engages in any for-profit or not-for-profit activities.

20 "Shipping package" means a container in which packs or  
21 cartons of cigarettes are shipped in connection with a delivery  
22 sale.

23 "Shipping documents" means bills of lading, air bills, or  
24 any other documents used to evidence the undertaking by a  
25 delivery service to deliver letters, packages, or other  
26 containers.

1       ~~"Within this State" means within the exterior limits of the~~  
2       ~~State of Illinois and includes all territory within these~~  
3       ~~limits owned by or ceded to the United States of America.~~

4       (Source: P.A. 95-1053, eff. 1-1-10.)

5               (720 ILCS 678/5)

6       Sec. 5. Unlawful shipment or transportation of cigarettes.

7       (a) It is unlawful for any person engaged in the business  
8       of selling cigarettes to ship or cause to be shipped any  
9       cigarettes unless the person shipping the cigarettes:

10              (1) is licensed as a distributor under either the  
11              Cigarette Tax Act, or the Cigarette Use Tax Act; or  
12              delivers the cigarettes to a distributor licensed under  
13              either the Cigarette Tax Act or the Cigarette Use Tax Act;  
14              or

15              (2) ships them to an export warehouse proprietor  
16              pursuant to Chapter 52 of the Internal Revenue Code, or an  
17              operator of a customs bonded warehouse pursuant to Section  
18              1311 or 1555 of Title 19 of the United States Code.

19       For purposes of this subsection (a), a person is a licensed  
20       distributor if the person's name appears on a list of licensed  
21       distributors published by the Illinois Department of Revenue.  
22       The term cigarette has the same meaning as defined in Section 1  
23       of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax  
24       Act. Nothing in this Act prohibits a person licensed as a  
25       distributor under the Cigarette Tax Act or the Cigarette Use

1 Tax Act from shipping or causing to be shipped any cigarettes  
2 to a registered retailer under the Retailers' Occupation Tax  
3 Act ~~and the Cigarette Tax Act~~ provided the cigarette tax or  
4 cigarette use tax has been paid.

5 (b) A common or contract carrier may transport cigarettes  
6 to any individual person in this State only if the carrier  
7 reasonably believes such cigarettes have been received from a  
8 person described in paragraph (a)(1). Common or contract  
9 carriers may make deliveries of cigarettes to licensed  
10 distributors described in paragraph (a)(1) of this Section.  
11 Nothing in this subsection (b) shall be construed to prohibit a  
12 person other than a common or contract carrier from  
13 transporting not more than 1,000 cigarettes at any one time to  
14 any person in this State.

15 (c) A common or contract carrier may not complete the  
16 delivery of any cigarettes to persons other than those  
17 described in paragraph (a)(1) of this Section without first  
18 obtaining from the purchaser an official written  
19 identification from any state or federal agency that displays  
20 the person's date of birth or a birth certificate that includes  
21 a reliable confirmation that the purchaser is at least 18 years  
22 of age; that the cigarettes purchased are not intended for  
23 consumption by an individual who is younger than 18 years of  
24 age; and a written statement signed by the purchaser that  
25 certifies the purchaser's address and that the purchaser is at  
26 least 18 years of age. The statement shall also confirm: (1)

1 that the purchaser understands that signing another person's  
2 name to the certification is illegal; (2) that the sale of  
3 cigarettes to individuals under 18 years of age is illegal; and  
4 (3) that the purchase of cigarettes by individuals under 18  
5 years of age is illegal under the laws of Illinois.

6 (d) When a person engaged in the business of selling  
7 cigarettes ships or causes to be shipped any cigarettes to any  
8 person in this State, other than in the cigarette  
9 manufacturer's or tobacco products manufacturer's original  
10 container or wrapping, the container or wrapping must be  
11 plainly and visibly marked with the word "cigarettes".

12 (e) When a peace officer of this State or any duly  
13 authorized officer or employee of the Illinois Department of  
14 Public Health or Department of Revenue discovers any cigarettes  
15 which have been or which are being shipped or transported in  
16 violation of this Section, he or she shall seize and take  
17 possession of the cigarettes, and the cigarettes shall be  
18 subject to a forfeiture action pursuant to the procedures  
19 provided under the Cigarette Tax Act or Cigarette Use Tax Act.

20 (Source: P.A. 95-1053, eff. 1-1-10.)

21 (720 ILCS 678/6)

22 (This Section may contain text from a Public Act with a  
23 delayed effective date)

24 Sec. 6. Prevention of delivery sales to minors.

25 (a) No person shall make a delivery sale of cigarettes to

1 any individual who is under 18 years of ~~the legal minimum~~ age.

2 (b) Each person accepting a purchase order for a delivery  
3 sale shall comply with the provisions of this Act and all other  
4 laws of this State generally applicable to sales of cigarettes  
5 that occur entirely within this State, ~~including, but not~~  
6 ~~limited to, those laws imposing: (i) excise taxes; (ii) sales~~  
7 ~~taxes; (iii) license and revenue stamping requirements; and~~  
8 ~~(iv) escrow payment obligations.~~

9 (Source: P.A. 95-1053, eff. 1-1-10.)

10 (720 ILCS 678/7)

11 (This Section may contain text from a Public Act with a  
12 delayed effective date)

13 Sec. 7. Age verification and shipping requirements to  
14 prevent delivery sales to minors.

15 (a) No person, other than a delivery service, shall mail,  
16 ship, or otherwise cause to be delivered a shipping package in  
17 connection with a delivery sale unless the person:

18 (1) prior to the first delivery sale to the prospective  
19 consumer, obtains from the prospective consumer a written  
20 certification which includes a statement signed by the  
21 prospective consumer that certifies:

22 (A) the prospective consumer's current address;

23 and

24 (B) that the prospective consumer is at least the  
25 legal minimum age;

1           (2) informs, in writing, such prospective consumer  
2 that:

3           (A) the signing of another person's name to the  
4 certification described in this Section is illegal;

5           (B) sales of cigarettes to individuals under 18  
6 years of ~~the legal minimum~~ age are illegal;

7           (C) the purchase of cigarettes by individuals  
8 under 18 years of ~~the legal minimum~~ age is illegal; and

9           (D) the name and identity of the prospective  
10 consumer may be reported to the state of the consumer's  
11 current address under the Act of October 19, 1949 (15  
12 U.S.C. § 375, et seq.), commonly known as the Jenkins  
13 Act;

14           (3) makes a good faith effort to verify the date of  
15 birth of the prospective consumer provided pursuant to this  
16 Section by:

17           (A) comparing the date of birth against a  
18 commercially available database; or

19           (B) obtaining a photocopy or other image of a  
20 valid, government-issued identification stating the  
21 date of birth or age of the prospective consumer;

22           (4) provides to the prospective consumer a notice that  
23 meets the requirements of subsection (b);

24           (5) receives payment for the delivery sale from the  
25 prospective consumer by a credit or debit card that has  
26 been issued in such consumer's name, or by a check or other

1 written instrument in such consumer's name; and

2 (6) ensures that the shipping package is delivered to  
3 the same address as is shown on the government-issued  
4 identification or contained in the commercially available  
5 database.

6 (b) The notice required under this Section shall include:

7 (1) a statement that cigarette sales to consumers below  
8 18 years of ~~the legal minimum~~ age are illegal;

9 (2) a statement that sales of cigarettes are restricted  
10 to those consumers who provide verifiable proof of age in  
11 accordance with subsection (a);

12 (3) a statement that cigarette sales are subject to tax  
13 under Section 2 of the Cigarette Tax Act (35 ILCS 130/2), Section 2 of the Cigarette Use Tax Act, and Section 3 of  
14 the Use Tax Act and an explanation of how the correct ~~such~~  
15 tax has been, or is to be, paid with respect to such  
16 delivery sale.

17  
18 (c) A statement meets the requirement of this Section if:

19 (1) the statement is clear and conspicuous;

20 (2) the statement is contained in a printed box set  
21 apart from the other contents of the communication;

22 (3) the statement is printed in bold, capital letters;

23 (4) the statement is printed with a degree of color  
24 contrast between the background and the printed statement  
25 that is no less than the color contrast between the  
26 background and the largest text used in the communication;

1 and

2 (5) for any printed material delivered by electronic  
3 means, the statement appears at both the top and the bottom  
4 of the electronic mail message or both the top and the  
5 bottom of the Internet website homepage.

6 (d) Each person, other than a delivery service, who mails,  
7 ships, or otherwise causes to be delivered a shipping package  
8 in connection with a delivery sale shall:

9 (1) include as part of the shipping documents a clear  
10 and conspicuous statement stating: "Cigarettes: Illinois  
11 Law Prohibits Shipping to Individuals Under 18 and Requires  
12 the Payment of All Applicable Taxes";

13 (2) use a method of mailing, shipping, or delivery that  
14 requires a signature before the shipping package is  
15 released to the consumer; and

16 (3) ensure that the shipping package is not delivered  
17 to any post office box.

18 (Source: P.A. 95-1053, eff. 1-1-10; revised 4-17-09.)

19 (720 ILCS 678/8)

20 (This Section may contain text from a Public Act with a  
21 delayed effective date)

22 Sec. 8. Registration and reporting requirements to prevent  
23 delivery sales to minors.

24 (a) Not later than the 15th day of each month, each person  
25 making a delivery sale during the previous calendar month shall

1 file a report with the Department containing the following  
2 information: ~~Each person who makes a delivery sale of~~  
3 ~~cigarettes to a consumer located within this State shall file~~  
4 ~~with the Department for each individual sale:~~

5 (1) the seller's ~~a statement setting forth such~~  
6 ~~person's~~ name, trade name, and the address of such person's  
7 principal place of business and any other place of  
8 business; ~~and~~

9 ~~(2) not later than the tenth day of each calendar~~  
10 ~~month, a memorandum or copy of the invoice for each and~~  
11 ~~every such delivery sale made during the previous calendar~~  
12 ~~month, which includes the following information:~~

13 (2) ~~(A)~~ the name and address of the consumer to whom  
14 such delivery sale was made;

15 (3) ~~(B)~~ the brand style or brand styles of the  
16 cigarettes that were sold in such delivery sale;

17 (4) ~~(C)~~ the quantity of cigarettes that were sold in  
18 such delivery sale; ~~and~~

19 (5) ~~(D)~~ an indication of whether or not the cigarettes  
20 sold in the delivery sale bore a tax stamp evidencing  
21 payment of the tax under Section 2 of the Cigarette Tax Act  
22 (35 ILCS 130/2); ~~and~~

23 (6) such other information the Department may require.

24 (b) Each person engaged in business within this State who  
25 makes an out-of-state sale shall, for each individual sale,  
26 submit to the appropriate tax official of the state in which

1 the consumer is located the information required in subsection  
2 (a).

3 (c) Any person that satisfies the requirements of 15 U.S.C.  
4 Section 376 shall be deemed to satisfy the requirements of  
5 subsections (a) and (b).

6 (d) The Department is authorized to disclose to the  
7 Attorney General any information received under this title and  
8 requested by the Attorney General. The Department and the  
9 Attorney General shall share with each other the information  
10 received under this title and may share the information with  
11 other federal, State, or local agencies for purposes of  
12 enforcement of this title or the laws of the federal government  
13 or of other states.

14 (e) This Section shall not be construed to impose liability  
15 upon any delivery service, or officers or employees thereof,  
16 when acting within the scope of business of the delivery  
17 service.

18 (f) The Department may establish procedures requiring  
19 electronic transmission of the information required by this  
20 Section directly to the Department on forms prescribed and  
21 furnished by the Department.

22 (Source: P.A. 95-1053, eff. 1-1-10.)

23 (720 ILCS 678/10)

24 Sec. 10. Violation.

25 (a) A person who violates subsection (a), (b), or (c) of

1 Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A  
2 misdemeanor. A second or subsequent violation of subsection  
3 (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a  
4 Class 4 felony.

5 (b) The Department of Revenue shall impose a civil penalty  
6 not to exceed \$5,000 on any person who violates subsection (a),  
7 (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The  
8 Department of Revenue shall impose a civil penalty not to  
9 exceed \$5,000 on any person engaged in the business of selling  
10 cigarettes who ships or causes to be shipped any such  
11 cigarettes to any person in this State in violation of  
12 subsection (d) of Section 5. Civil penalties imposed and  
13 collected by the Department shall be deposited into the Tax  
14 Compliance and Administration Fund.

15 (c) All cigarettes sold or attempted to be sold in a  
16 delivery sale that does not meet the requirements of this Act  
17 shall be forfeited to the State. All cigarettes forfeited to  
18 this State under this Act shall be destroyed or maintained and  
19 used in an undercover capacity. The Department may, prior to  
20 any destruction of cigarettes, permit the true holder of the  
21 trademark rights in the cigarette brand to inspect such  
22 contraband cigarettes, in order to assist the Department in any  
23 investigation regarding such cigarettes.

24 (d) Any person aggrieved by any decision of the Department  
25 of Revenue may, within 60 days after notice of that decision,  
26 protest in writing and request a hearing. The Department of

1 Revenue shall give notice to the person of the time and place  
2 for the hearing and shall hold a hearing before it issues a  
3 final administrative decision. Absent a written protest within  
4 60 days, the Department's decision shall become final without  
5 any further determination made or notice given.

6 (e) The penalties provided for in this Section are in  
7 addition to any other penalties provided for by law.

8 (Source: P.A. 95-1053, eff. 1-1-10.)

9 (720 ILCS 678/33 new)

10 Sec. 33. Rulemaking. The Department may adopt rules to  
11 implement and administer this Act.

12 Section 90. "An Act concerning revenue", approved April 10,  
13 2009, Public Act 95-1053, is amended by changing Section 10 as  
14 follows:

15 (P.A. 95-1053, Sec. 10)

16 Sec. 10. The Cigarette Tax Act is amended by repealing  
17 Section ~~Sections 9e and~~ 28.

18 (Source: P.A. 95-1053, eff. 1-1-10.)

19 Section 99. Effective date. This Act takes effect January  
20 1, 2010, except that Sections 90 and 99 take effect upon  
21 becoming law.